

2017

City of Ellsworth Maine Ordinances

Ellsworth, Me.

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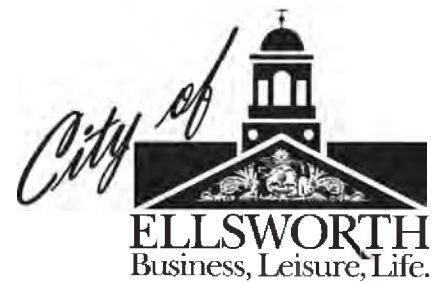
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**CHAPTER 1
THE CITY SEAL
CITY OF ELLSWORTH, MAINE**

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Section 101. The City Seal.

The design hereto annexed shall be the device of the City Seal, and the inscription shall be as follows, to wit:

“CITY OF ELLSWORTH, STATE OF MAINE, 1869”

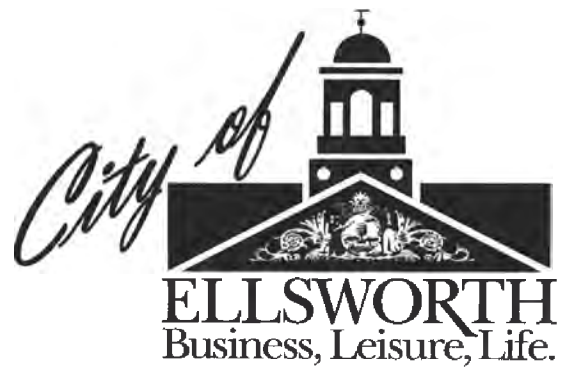


City Seal

City of Ellsworth Ordinances
Chapter 2

Building Code

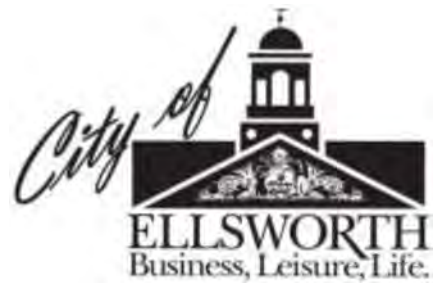
This ordinance was repealed on 7/1/2012.



CHAPTER 3
HARBOR ORDINANCE
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi-Noël Grindle
City Clerk



Repealed and replaced March 18, 2013
Amended November 18, 2013
Amended April 16, 2018
Repealed/Replaced Article 1 Section 5 May 21, 2018

**ARTICLE 1
GENERAL PROVISIONS**

SECTION 1. HARBOR ORDINANCE ADOPTION

Pursuant to title 38, M.R.S.A., Subchapter 1 and 30-A M.R.S.A. § 3001, as amended, the City Council of Ellsworth, Maine, hereby adopts the following ordinance, entitled “HARBOR ORDINANCE FOR THE CITY OF ELLSWORTH,” and establishes the boundaries for the harbor.

SECTION 2. PURPOSE

This ordinance is to establish regulations for marine activities within the harbors, waterways, and tidal waters of the City of Ellsworth, Maine to insure safety to persons and property, to promote availability and use of a valuable public resource. This ordinance shall be subordinate to existing Federal and State laws governing the same matters and is not intended to preempt other valid laws.

SECTION 3. INNER AND OUTER HARBOR LIMITS

“Harbors and waterways” shall include the following:

The Harbor shall be divided into an inner and an outer harbor.

A. Inner Harbor: Beginning on the easterly side of the Union River at Tinker’s Wharf so called, high water line; thence proceeding northerly along the shore to the Union River Bridge; thence proceeding westerly along said bridge to the westerly shore of the Union River; thence southerly along the high water mark of the western shore of the Union River to N 44° 31’ .703”, W 068° 25’ .551””; thence proceeding easterly to the point of beginning.

B. Outer Harbor: “Beginning on the easterly side of Union River, at Tinker’s Wharf so called, high water line; thence proceeding southerly along the shore to the Ellsworth City line; thence proceeding westerly to the Ellsworth/Surry line; thence northerly along the high water mark of the western shore of Union River to N 44° 31’ .703”, W 068° 25’ .551””; thence proceeding easterly to the point of beginning.

Tidal waters shall include all waters which ebb and flow between high tide and mean low water within the harbor and waterway of the City of Ellsworth.

SECTION 4. HARBORMASTER

(a) The Harbormaster will be recommended by the Harbor Commission and appointed by the City Manager. The term will be for one year and run from July 1 through June 30. Certain duties and responsibilities of this office are prescribed by Title 38, M.R.S.A. The Harbormaster has the additional duty to administer and enforce the provisions of this ordinance with the authority granted by law and through his appointment as Harbormaster. The Harbormaster will provide technical assistance and submit periodic reports as requested to the Harbor Commission.

(b) A Deputy Harbormaster may be appointed upon recommendation of the Harbormaster. The compensation of the Harbormaster and Deputy shall be established by the City Council.

(c) In addition to the duties prescribed under Title 38, M.R.S.A., the Harbormaster and Deputy shall be the overseers of the City's waterfront facilities such as moorings, floats, docks, ramps, parking areas, picnic areas, and any buildings or structures in the harbor area. They shall make recommendations to the Harbor Commission for maintenance and improvements to all city-owned waterfront facilities. They shall have full authority to enforce all harbor regulations affecting the waterfront to the fullest extent permitted by law.

(d) The Harbormaster, and all law enforcement officers, shall have the authority and power to enforce the provisions of this ordinance and all other laws and ordinances that are applicable to the harbor, waterfront and watercraft.

(e) No person shall assault, intimidate or in any manner willfully obstruct, intimidate or hinder the Harbormaster or his Deputy in the lawful performance of their duties.

(f) The Harbormaster shall not carry a sidearm.

(g) The Harbormaster will attend such training as recommended by the Harbor Commission and as directed by the City Manager.

SECTION 5: THE ELLSWORTH HARBOR COMMISSION

1. Duties and Powers of the Harbor Commission:

The Duties of the Harbor Commission shall consist of harbor planning, operation, and regulation. The Commission shall make recommendations to the City Manager and City Council in matters that directly concern the waterfront area, marina, and Harbor Park including the duties and responsibilities of the Harbor Master and Deputy Harbormaster.

2. Appointment:

- a. Commission Members shall be appointed by the City Council upon recommendation from the Harbor Commission and sworn in by the City Clerk or other person authorized to administer oaths.
- b. The Board shall consist of seven (7) Fulltime Members and three (3) Alternate Members.
- c. The terms of the Fulltime Members shall be three (3) year staggered terms with two member terms expiring each year on June 30 except that every third year three member terms shall expire. Alternate Members shall serve a one (1) year term which ends on June 30.

3. Qualifications:

Members shall be either a resident or real estate property owner of the City of Ellsworth.

4. Organization and Rules:

- a. **Officers:** The board shall elect a chairperson, vice chairperson, and secretary from among its members in January of each year. The term of each of these officers shall be for a maximum of one (1) year with eligibility for re-election.
- b. **Meetings:** Meetings shall be held once a month. If a meeting is to be cancelled or the date is to be changed proper notice must be given to the public by posting notice at City Hall. Special meetings may be called by a majority of the full time members or Chairman with proper notice to the membership and the general public.
- c. **Quorum:** The board shall not act without a quorum of at least four (4) members.
- d. **Alternates:** Alternate members shall attend all meetings of the Commission and participate in its proceedings but may vote only when there are fewer than seven (7) voting Fulltime Members present. Alternate Members shall be designated by the Chairperson to participate and vote when a member is unable to act because of conflict of interest, physical incapacity, absence, or any other reason satisfactory to the Chairperson. Designated participation shall be based on seniority.
- e. **Public Record:** The Secretary, or designee, shall keep a record of its resolutions, transactions, correspondence, findings, and determinations shall be filed with the City Clerk upon approval by the Commission.

SECTION 6. INVALIDITY PROVISION

If any provision of this ordinance is held invalid or inoperative, the remainder shall continue in full force and effect as though such invalid or inoperative provision had not been made.

SECTION 7. ORDINANCE DISTRIBUTION

Copies of all harbor ordinances and amendments will be available to the public at the Harbormaster's office.

**ARTICLE II
DEFINITIONS**

1. **Anchorage:** Shall mean an area of the harbor set aside for permanent moorings or for the temporary anchoring of boats and vessels.
2. **Auxiliary:** Shall mean any vessel having both sails and either an inboard or outboard motor and which may be propelled by its sails or by its motor or both.
3. **Basin:** Shall mean a naturally or artificially enclosed or nearly enclosed body of water where small craft may lie.
4. **Commercial Vessel:** Shall mean any vessel used or engaged for any type of commercial venture, including but not limited to fishing or carrying cargo and/or passengers for hire.

5. **Distress:** Shall mean a state of disability of a present or obviously imminent danger which, if duly prolonged could endanger life or property.
6. **Emergency:** Shall mean a state of imminent or proximate danger to life or property in which time is of the essence.
7. **Float:** Shall mean any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.
8. **Illegally Berthed:** Shall mean docking a vessel without permission or permit from the Harbormaster.
9. **Mooring:** Shall mean any appliance used by a craft for anchoring purposes and which appliance is not carried aboard such craft when underway as regular equipment.
10. **Mooring, Abandoned:** Shall mean a mooring that remains unused for a year.
11. **Nonresident:** Shall mean all persons without a residence in the City of Ellsworth.
12. **Resident:** Shall mean any person owning or renting real property in the City of Ellsworth who uses that property as a residence.
13. **Riparian Owner:** Shall mean an owner of a parcel of land located in the City of Ellsworth which borders upon the harbor as described in Article 1, Section 3.
14. **Shore:** Shall mean that part of the land in immediate contact with a body of water, including the area between the high and low water lines.
15. **Shall and May:** “Shall” is mandatory. “May” is permissive.
16. **State:** Shall mean the State of Maine.
17. **Stray Vessel:** Shall mean (1) an abandoned vessel; (2) a vessel the owner of which is unknown; (3) a vessel underway without a competent person in command.
18. **To Anchor:** Shall mean to secure a vessel to the bottom within a body of water by dropping an anchor or anchors or some other ground tackle.
19. **Underway:** Shall mean the condition of a vessel not at anchor; without moorings; and not made fast to the shore nor aground.
20. **Vessel:** Shall mean a watercraft of any kind including boats, scows, dredges, and barges but excluding floats and shellfish cars, other structures permanently attached to moorings.
21. **Vessel, Derelict:** A vessel shall be considered “derelict” if any of the following circumstances exist: a. the vessel is fastened to neither a mooring nor an anchor; b. the vessel lacks any license or registration, from any authority, the possession of which is a prerequisite to the operation of such a vessel; 3. the vessel is submerged to a level substantially above its normal water line, and remains so for a period of at least fourteen (14) consecutive days without reasonable explanation; 4. the vessel is damaged to such an extent that it cannot be moved under its own power.
22. **Visiting Vessel/Transient:** A vessel will be considered visiting or transient if the vessel is not normally moored or does not have a permanent mooring in the harbor.
23. **Waterway:** Shall mean any water area providing access from one place to another, principally a water area providing a regular route for water.

ARTICLE III GENERAL BOATING AND TRAFFIC CONTROL

SECTION 1. TRAFFIC CONTROL AUTHORITY

The Harbormaster or his Deputy shall have the authority to control waterborne traffic in any portion of the harbor under his jurisdiction by use of authorized State regulatory markers, signal, orders or directions and/or at any time preceding, during and after any race, regatta, parade or other special event held in any portion of the waters of the harbor or at any time when the Harbormaster deems it necessary in the interest of safety of persons and vessels or other property and it shall be unlawful for any person to willfully fail or refuse to comply with any authorized State regulatory marker utilized by the Harbormaster, or with any signs, orders or direction of the Harbormaster.

SECTION 2. BASIC SPEED LAWS

The operation of any vessel within the harbor area in excess of posted speed limits or, in the absence of such limits, in a manner to create a wash which endangers persons or property, shall constitute a violation of this Ordinance; provided that special written permission may be granted to conduct or engage in water sports and regattas in specific designated areas.

ARTICLE IV GENERAL REGULATIONS

SECTION 1. LIABILITY

Boat Owner: Any person using the facilities within the limits of the harbor area shall assume all risk of danger or loss of his property, and the City of Ellsworth assumes no risk on account of fire, theft, act of God, or damages of any kind to vessels within the harbor or on land facilities.

SECTION 2. LAUNCHING AND RECOVERY OF VESSELS

None other than the driver may occupy a motor vehicle while it is present upon the area known as a launching ramp located within the City of Ellsworth.

SECTION 3. PERMITS AND REGISTRATON PROCEDURE

All permits granted under the authority of this Ordinance shall be valid only for such period as may be determined by the Harbor Commission and permits of unqualified duration or validity shall not be granted.

Each mooring owner will annually submit a mooring permit application and pay a fee set by the Ellsworth City Council. This fee shall be paid to the City Treasurer on or before May 15th of each year. Failure to comply will incur late fees and may result in removal of mooring and loss of berth. Mooring applications are located at Ellsworth City Hall.

Each year, a waiting list for mooring space shall be created. New applicants must fill out and return a mooring waiting list application with payment to the Harbormaster. The applicant shall pay an annual waiting list fee set by the City Council to remain on a waiting list until a mooring space is approved or denied by the Harbormaster. Mooring spaces shall be approved or denied on a first come, first serve basis.

SECTION 4. DAMAGE TO HARBOR OR OTHER PROPERTY

It shall be unlawful to willfully or carelessly destroy, damage, disturb or interfere with any public or private property in the harbor area.

SECTION 5. TAMPERING WITH OR BOARDING VESSELS WITHOUT PERMISSION

It shall be a violation of this Ordinance for any person to willfully board, break into, move or tamper with any vessel or part thereof, located within the harbor unless authorized by the rightful owner of such vessel. Violation of this provision shall constitute a misdemeanor, punishable by the penalties herein above provided for violations of this Ordinance and to additional penalties not to exceed the aggregate of \$1,000 and six months imprisonment for each offense. Any person violating this provision shall, in addition, be responsible to the rightful owner of any such vessel for any damage caused by such violation and to the reasonable cost of any attorney's fees incurred as a result thereof.

SECTION 6. SIGNS AND MAINTENANCE

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

SECTION 7. GENERAL RESTRICTIONS

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

- a) casting stones, rocks or other material into the waters of the harbor
- b) swimming from the floats or from any watercraft that are secured to the floats.
- c) All types of fishing, with the exception of fly fishing, are permitted from the floats however, the fishing lines shall in no way hamper the tying up of vessels and of those approaching the floats.
- d) the use the launching ramp for more than twenty (20) minutes without the permission of the Harbormaster.
- e) tying a boat to the floats or wharf for more than two (2) hours on the front (western) side and four (4) hours on the back (northeastern) side without permission of the Harbor Master. The southeastern side is reserved for dinghies and tenders.
- f) grounding out, tying up or permitting to be grounded out, any watercraft on the launching ramp.
- g) The placing of any skid, trailer, boat or any other craft on the waterfront grounds are allowed in designated areas only, or by permission of the Harbormaster.

SECTION 8. HARBORMASTER'S BOAT

Any vessel provided by the city shall be for the safety and maintenance of Ellsworth Harbor. Any other use is forbidden without the approval of the City Manager.

The vessel shall be under the direct control of the Harbormaster. No person shall use the Harbormaster's vessel without express permission of the Harbormaster.

SECTION 9. DATES AND HOURS OF OPERATION

The Ellsworth Harbor will be open from May 15th through October 15th of each year. Normally, the Harbormaster or designee will be on duty between 8 a.m. and 5 p.m. Boats must be removed from the Ellsworth Harbor on or before October 22nd of each year. The Harbormaster may grant a vessel owner permission to extend the vessel removal date until October 31st.

The Harbor park shall be closed between the hours of 11:00 p.m. and 6:00 a.m. except for those boat owners staying on board overnight, loading or unloading boats and/or with written permission of the Harbormaster.

ARTICLE V ANCHORING, MOORING AND SECURITY OF VESSELS

SECTION 1. PLACEMENT OF PRIVATE MOORINGS OR FLOATS

It shall be a violation of this Ordinance to place any mooring or float in the harbor without a permit from the Harbormaster.

SECTION 2. MINIMUM MOORING REQUIREMENTS

Size of Boat	Below 16'	17'to25'	26'to35'	Over36'
Weight of Block	500#	1000#	1500#	2000#
Size of Chain ¹⁶	1/2"	1/2"	1/2"	1/2"
Size of Nylon	1/2"	1/2"	1/2"	3/4"

All mooring buoys shall conform to Coast Guard regulations and are to show at all tides.

All mooring gear is to be inspected by the Harbormaster before setting.

Vessels being moored or berthed at the Ellsworth Harbor cannot exceed 39.5 feet (length overall) or a beam exceeding 12 feet.

The Harbormaster shall maintain a plot plan of all mooring locations showing depth of water at mean low tide for each mooring and owner of each mooring.

The minimum number of days that a vessel must occupy the designated mooring or slip is 45 days. Any exceptions to the time requirement must be recommended by the Harbormaster and approved by the Harbor Commission. Failure to satisfy this requirement shall result in the loss of the mooring or slip space and if not removed from

the Harbor by November 1st of that year, shall be deemed abandoned. It is the Harbormaster's responsibility to document the noncompliance of this requirement.

A vessel owner may only occupy either a slip or a mooring during the season. A household cannot occupy or hold both a mooring and a slip.

The owner of a mooring that has been set in the harbor shall not sublet the mooring or mooring space to any other, except with permission of the Harbormaster.

An abandoned mooring shall become the property of the City of Ellsworth after an attempt has been made to notify the owner. The abandoned mooring will be removed and disposed of in accordance with the City's policy on the sale of surplus property.

SECTION 3. USE OF A CITY MOORING OR FLOATS

- a) Permission may be granted by the Harbormaster for a private vessel to use a city mooring temporarily without charge for up to 24 hours. Private vessels docked at City facilities for a period in excess of 4 hours shall pay docking fees as hereinafter provided or as posted.
- b) Docking is limited to fourteen (14) consecutive days followed by an absence of fourteen (14) consecutive days.
- c) No person shall store traps, bait, fishing gear, boats or waste material on the floats at any time. Said gear may be loaded and unloaded only in a speedy fashion.

SECTION 4. VESSELS MAKING FAST

No person shall make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored except a rowboat, dinghy or yacht tender regularly used by such a larger vessel. If tied within a slip, such rowboat, dinghy or tender shall not extend into the fairway beyond the larger vessel if such larger vessel is also occupying the slip or otherwise beyond the larger vessel if such larger vessel is also occupying the slip or otherwise beyond the slip itself.

The owner of any vessel moored or anchored within Ellsworth harbor shall be responsible for causing such vessels to be tied and secured with proper care and equipment and in such manner as may be required to prevent breakaway and/or dragging of mooring and resulting in damage to other watercraft and property, and shall thereafter provide for inspection of the placement and adjustment of the vessel's mooring by August 1. In addition, every two years, each owner shall allow visual inspection by the Harbormaster, or his qualified designee, of each vessel's mooring and the mooring's related equipment including, but not limited to, floats, chains and staples. If the mooring is assigned an odd number, that mooring will require inspection on an odd year. If the mooring is assigned an even number, that mooring will require inspection on an even year. It is the Harbormaster's responsibility to retain and maintain inspection documentation. If an inspection has not been performed by August 1, the vessel is considered illegally berthed, the Harbormaster may proceed with an enforcement action as

described in Article 10 Section 4. Before removing the mooring, the Harbormaster shall notify the master or owner, if ownership can be determine, by mail at the last known address of the action desired of him, the fact that the mooring will be removed and the fine. The Harbormaster shall also notify the City Manager and the Harbor Commission of such intended action. If the matter is not settled to his satisfaction within two weeks, the Harbormaster may take the action provided for in this section.

SECTION 5. MOORING VESSELS TO BUOYS

No person shall moor any watercraft to any buoy, beacon or other marker placed in the harbor to mark and define the harbor channels, or in any manner to make said watercraft fast thereto or to willfully destroy any such buoy, beacon or other marker.

SECTION 6. SKIFFS AND DINGHIES

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

- a. Each skiff or dinghy shall be clearly and visibly marked with at least the corresponding mooring number;
- b. Skiffs or dinghies shall not be secured to the face of the Harbor's main float;
- c. All skiffs and dinghies shall be properly secured, maintained, and bailed and shall be secured at the bow only;
- d. Skiffs and dinghies secured in the designated areas may be no longer than 10 feet (LOA) and no wider than a maximum beam of 5 feet;
- e. Dinghies shall not be left on the launching ramp, floats or piers.

SECTION 7. MOORING REPLACEMENT

- a. If the Harbormaster determines that a mooring needs to be removed or replaced with one of a different character, the Harbormaster may so direct the master or owner of the vessel whose mooring it is to do so.
- b. If the owner or master of the vessel neglects or refuses to comply with the Harbormaster's order, the Harbormaster may, subject to subsection C, cause the entire mooring to be removed or the buoy removed and the chain dropped to the bottom or shall make such change in the character of the mooring as required and collect from the master or owner of that boat or vessel the sum of \$100 for either of those services rendered and the necessary expenses.
- c. Before removing a mooring or a buoy, the Harbormaster shall notify the master or owner, if ownership can be determine, by mail at the last known address of the action desired of him, the fact that the mooring will be removed and the fine. The Harbormaster shall also notify the City Manager and the Harbor Commission of

such intended action. If the matter is not settled to his satisfaction within two weeks, the Harbormaster may take the action provided for in this section.

ARTICLE VI COMMERCIAL ACTIVITY

No person shall tie up or permit to be tied up to the City Dock any watercraft for any commercial purpose except with the permission of the Harbormaster.

ARTICLE VII SANITATION REGULATIONS

SECTION 1. DISCHARGE OF REFUSE

It shall be a violation of this Ordinance to discharge or permit the discharge into the water of the harbor of any refuse, waste matter from toilets, petroleum or petroleum matter, paint, varnish or any other foreign matter, including dead animals, fish and bait.

SECTION 2. RESPONSIBILITY FOR SANITATION OF VESSELS

The owner, lessee, agent, captain or person in charge of a vessel within the Ellsworth harbor shall be responsible for any costs of clean-up. Should the Harbormaster find that any vessel or watercraft is not complying with this Ordinance he shall, in writing, notify the said owner, lessee, agent or captain or other person in charge of said vessel to immediately halt such action and commence to prosecute to completion of the correction or the unsanitary condition to the satisfaction of the Harbormaster. Failure to do so with reasonable dispatch shall be in violation of this Article, and the Harbormaster may then cause the condition to be corrected and the cost of such correction shall be charged to said owner, lessee, captain or any other person in charge.

ARTICLE VIII SAFETY AND MAINTENANCE

SECTION 1. FLAMMABLE AND COMBUSTIBLE LIQUIDS AND/OR MATERIALS

Within the harbor area boundary, including parking areas, etc., no person shall sell, offer for sale or deliver in bulk any class of flammable liquid or combustible material, nor dispense any flammable or combustible liquids in the fuel tanks of a vessel except when in compliance with all requirements of the N.F.P.A. Code 31, fire code and any other laws or regulations applicable thereto.

SECTION 2. OBSTRUCTION TO DOCKS AND WALKWAYS

Obstruction to docks and walkways within the harbor area by mooring lines, water hoses, electrical cables, boarding ladders, permanently fixed stairs or any other materials is strictly prohibited.

SECTION 3. MOTOR VEHICLES

Motor vehicles are not to be left unattended on or near the launching ramp. All motor vehicles are to be parked only in designated areas, unless otherwise notified by the Harbormaster. Motor vehicle operators are to comply with all parking regulations as posted by the City of Ellsworth.

SECTION 4. OBSTRUCTING CHANNELS

It shall be a violation of the Ordinance to knowingly or willfully obstruct the free use of any channel or waterway within the harbor or to fail to report to the Harbormaster any collision between vessels or other accident or incident causing damage to persons or property.

SECTION 5. UNSAFE BERTHING

If any vessel shall be found, in the judgment of the Harbormaster, to be anchored or moored within the harbor facility in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels or to persons or property, the Harbormaster shall order and direct measures to eliminate such unsafe or dangerous condition. Primary responsibility for such compliance with such orders and directions shall rest with the owner of the improperly anchored or moored vessel or his authorized agent. In the absence of such owner or agent, said responsibility shall rest with the authorized operator of the facility at which the vessel is anchored or moored. In an emergency situation in the absence of any such responsible person, the Harbormaster shall forthwith board such vessel and cause the improper situation to be corrected, and the owner of the vessel shall be liable for any costs incurred by the City of Ellsworth in effecting such correction.

ARTICLE IX FEES

Upon recommendation of the Harbor Commission, the City Council shall approve all fees pertaining to the Ellsworth Harbor.

All fees shall go into the General Fund of the City of Ellsworth.

ARTICLE X ENFORCEMENT

Except where stricter penalties are provided for elsewhere in this Ordinance, or under state or federal law, any violation of this Ordinance shall be a civil offense punishable pursuant to 30-M.R.S.A. 4452(5)(R), as amended. Each day that such violation continues to exist shall constitute a separate violation. Any fines collected for the benefit of the City of Ellsworth shall be deposited in the General Fund. The Harbormaster and any law enforcement officer vested with the authority to carry a weapon and make arrests shall have the authority to enforce this Ordinance. All civil prosecutions under this Ordinance shall be prosecuted by the City Attorney pursuant to the Charter of the City of Ellsworth (Article V, part 4).

SECTION 1. NON-PAYMENT OF FEES

If the Harbormaster determines that a fee, charge for service, or forfeiture or penalty imposed by the City of Ellsworth under this ordinance has not been paid, the Harbormaster shall notify the master or owner of a vessel by mailing the notice to the last known address by first class mail, or if no current address is known, by leaving a copy of the notice on the vessel if the vessel is in the Ellsworth Harbor.

If the Harbormaster determines that a fee, charge for service, or forfeiture or penalty imposed by the City of Ellsworth under this ordinance has not been paid from a previous season, the Harbormaster may refuse to assign mooring privileges to any vessel, boat owner, or master until all such arrears are paid in full.

SECTION 2. SUSPENSION OR REVOCATION OF PERMITS

A violation of the provisions of this Ordinance or of any other applicable Ordinance by any permittee, including the non-payment of all fees and charges for service, shall be grounds for suspension or revocation of such permits.

The Harbormaster will notify the City Manager and Harbor Commission if the Harbormaster recommends suspension or revocation to the City Council.

The City Council shall convene a hearing to suspend or revoke the owner's permits. A notice to the owner shall be provided that includes instructions and rights to have a hearing with the Ellsworth City Council.

SECTION 3. REMOVAL AND CUSTODY OF ILLEGALLY BERTHED OR ABANDONED VESSELS

The Harbormaster may assume custody of a vessel and cause it to be removed when:

- a. Any unattended vessel shall be found to be secured, moored illegally, or moored without permission or permit within the harbor.
- b. The mooring has not been inspected per Article 5 Section 4, or
- c. If the Harbormaster has reasonable cause to believe that a vessel has been abandoned within the harbor.
- d. If the Harbormaster concludes that a vessel poses an immediate threat to the health, safety, or welfare of persons using either the Harbor or lands adjoining the Harbor, the Harbormaster has directed the master or owner of such vessel to immediately move the vessel and the master or owner of such vessel has refused.
- e. Upon receiving a complaint from the owner of a vessel that another vessel is obstructing the free movement or safe anchorage or owner's vessel, the Harbormaster shall direct the master or owner of such vessel to move the vessel to a position to be designated by the Harbormaster and the master or owner of such has refused.
- f. If the Harbormaster finds any vessel anchoring within the channel lines as established by the City of Ellsworth, the Harbormaster shall direct the master or

owner of such vessel to remove such anchorage and the master or owner of such vessel has refused.

The City of Ellsworth and its officials shall not be held liable for any damage to such vessel or liable to its owners before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Harbormaster only after satisfactory proof of ownership has been presented and full reimbursement made to the City for all costs incident to recovery, movement and/or storage.

SECTION 4: PROCEDURES FOR IMPOUNDING VESSELS

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

Within 24 hours of such action, the Harbormaster shall notify the master or owner of the vessel, the City Manager, and the Harbor Commission of such action.

ARTICLE X ENACTMENT

When duly enacted upon and approved by the Harbor Commission and the Ellsworth City Council, this Ordinance shall supersede any and all ordinances pertaining to the harbor and/or the Union River in the City of Ellsworth previously enacted.

¹ Harbor Fee Schedule:

Annual Waiting List Application Fee	\$10 per year
Annual Slip Waiting List Application	\$25 per year ²
Resident Mooring Fee, Inner Harbor	\$150 per mooring, per year ³
Non-Resident Mooring Fee, Inner Harbor	\$150 per mooring, per year ⁴
Outer Harbor Mooring Fee	\$10 per mooring, per year
Float Mooring Fee	\$25.00 per year ⁵
Guest Mooring Fee	\$20 per night
Dinghy fees	None
Power fee – Transient Vessels	\$5 per night ⁶
Floating Dock	\$17 per foot * per season ⁷
Main Dock Fee:	\$1.50 per foot, per day, after 4 hours or at the discretion of the Harbormaster.
Dock “B” Extension	\$30 per foot, per season ⁸
Harbor Slips 30’	\$1,600 per season ⁹
Harbor Slips 25’	\$1,350 per season ¹⁰
Harbor Slips ½	\$ 1,000 per season ¹¹
Weekly Slips Rental	\$150 per week ¹²
After hour events and compensation	\$30 per hour, minimum of two hours. ¹³
Transient Slip Cost	\$2 per foot per night ¹⁴
Mooring/Slip Application Late Fee	\$50 per application ¹⁵
Harbor Park Event (Ellsworth Taxpayer/ Mooring or Slip Owner)	\$50 per event ¹⁶
Harbor Park Event (Non Taxpayers)	\$100 per event ¹⁷
To be reviewed annually as deemed necessary by the Harbor Commission ¹⁸	

*Per overall length of the boat including bow sprit and swim platforms

Approved at the April 16, 2018 Council Meeting.

A True Copy

Attest: _____
Heidi-Noël Grindle

¹ Approved 10/18/2010

² Approved 3/18/2013

³ Approved 2/8/2016

⁴ Approved 2/8/2016

⁵ Approved 4/16/2018

⁶ Approved 3/18/2013

⁷ Approved 2/8/2016

⁸ Approved 3/21/2016

⁹ Approved 2/8/2016

¹⁰ Approved 2/8/2016

¹¹ Approved 1/11/2016

¹² Approved 5/16/2011

¹³ Approved 7/18/2011

¹⁴ Approved 3/18/2013

¹⁵ Approved 3/18/2013

¹⁶ Approved 8/19/2013

¹⁷ Approved 8/19/2013

¹⁸ Approved 3/18/2013 as part of the motion for CO#031307

CHAPTER 4
FIRE PROTECTION AND PREVENTION
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi Noel Grindle
City Clerk



Adopted 7/21/2008
Effective date 9/1/2008
Amended 6/20/2011
Amended 4/15/2013
Amended 4/17/2017

Chapter 4
Fire Protection and Prevention
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Article I
Ordinance Authority

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

*Amended 6/20/2011

*Amended 4/15/2013

*Amended 4/17/2017

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

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

Article II
Adopted Codes and References

Sec. 2.1 The City of Ellsworth adopts all Codes, Standards, Rules, and Statues including admissions and omissions as adopted by the State of Maine Fire Marshal's Office and Title 25, chapters 313-321 as the basis for inspection, plans review and enforcement for buildings other than one and two family dwellings. (*Standards, Rules, Codes and Maine Revised Statues* adopted by the State Fire Marshal's Office appear in appendix attached hereto as amended)

Sec. 2.2 Municipal plans review for fire and life safety

The City of Ellsworth shall review construction projects of public buildings as described in MRS Title 25 section 2448.

Sec. 2.2.1 Fire and Life Safety Plans Review FEE SCHEDULE

The City of Ellsworth, in accordance with requirements of the Maine Administrative Procedure Act, establish a schedule of fees for the examination of all plans for construction, reconstruction or repairs submitted to the City of Ellsworth. The fee schedule for new construction or new use is 5¢ per square foot for occupied spaces and 2¢ per square foot for bulk storage occupancies, except that a fee for review of a plan for new construction by a public school may not exceed \$450. The fee schedule for reconstruction, repairs or renovations is based on the cost of the project and may not exceed \$450. For projects reviewed by the City of Ellsworth that include occupied spaces, a 1¢ fee per square foot must be remitted to the Department of Public Safety and a 4¢ fee per square foot shall be retained by the municipality.

The City of Ellsworth shall not charge a developer a fee that is in excess of the 4¢ fee per square foot for fire and life safety plans review construction permits. This limitation does not prohibit the City of Ellsworth from charging fees for other construction-related permits.

Sec. 2.2.2 Surcharge fee for Uniform Building Codes and Standard

In addition to the fees established in Section 2.2.1, a surcharge of 4¢ per square foot of occupied space shall be levied for new construction, reconstruction, repairs, renovations or new use. The surcharge fee is for the sole purpose of funding the activities of the Technical Building Codes and Standards Board with respect to the Maine Uniform Building and Energy Code.

Sec 2.2.3 Barrier-Free Construction Permits

All projects applying for a Barrier-Free Permit are also required to apply for a Construction Permit. Barrier-Free permits are issued in conjunction with a construction permits. The Office of State Fire Marshal issues Barrier Free permits.

A Design Professional, licensed with the State of Maine, is required on projects over \$75,000 to certify compliance with state and federal accessibility laws. (This applies whether the project is new construction or an alteration.)

The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility.

The builder shall also provide the certification to the municipality where the facility exists or will be built.

Sec. 2.2.3.1 New Construction projects.*

Regardless of cost or size, the following occupancies require a Barrier-Free permit:

- State, municipal or county
- Education
- Health care, residential care nursing homes or any facility licensed by the Department of Health and Human Services
- Public assembly
- Hotel, motel, inn or rooming or lodging house
- Restaurant
- Business occupancy of more than 3,000 square feet or more than one story
- Mercantile occupancy of more than 3,000 square feet or more than one story

*An alteration is considered to be new construction by the Maine Human Rights Act if the cost of the alteration is 75% or more of the replacement cost of the completed facility.

CONSTRUCTION PERMIT AND BARRIER-FREE PERMIT FEE SCHEDULES

New Construction
 Permit Fee:
 \$.05/ square foot of occupied space
 \$.02/ square foot for bulk storage occupancies

Renovations exceeding 80% of occupied space are considered to be new construction.
 Note: All public school projects (K – 12) follow the renovation fee schedule below.

Renovations
 Permit Fee based on estimated Construction Cost of the entire project
 \$25.00.....For
 under.....\$10,000.00

\$50.00.....	From.....	\$10,000.00
	but less than.....	\$20,000.00
\$75.00.....	From.....	\$20,000.00
	but less than.....	\$50,000.00
\$100.00.....	From.....	\$50,000.00
	but less than.....	\$100,000.00
\$150.00.....	From.....	\$100,000.00
	but less than.....	\$500,000.00
\$200.00.....	From.....	\$500,000.00
	but less than.....	\$1,500,000.00
\$250.00.....	From.....	\$1,500,000.00
	but less than.....	\$2,250,000.00
\$350.00.....	From.....	\$2,250,000.00
	but less than.....	\$3,000,000.00
\$450.00.....	From.....	\$3,000,000.00

BARRIER-FREE PERMIT FEES
 Permit Fee based on estimated Construction Cost of the entire project

\$25.00.....	For under.....	\$100,000.00
\$50.00.....	From.....	\$100,000.00
	but less than.....	\$350,000.00
\$150.00.....	From.....	\$350,000.00
	but less than.....	\$600,000.00
\$200.00.....	From.....	\$600,000.00
	but less than.....	\$2,000,000.00
\$250.00.....	From.....	\$2,000,000.00

Article III
Fire Prevention

Sec. 3.1 Fire Prevention Code

The City of Ellsworth Fire Protection and Prevention Code shall be administered and enforced by the Ellsworth Fire Chief or designee and the city of Ellsworth Code Enforcement officer or designee.

Sec. 3.2 Fire Inspector

The position of Fire Inspector shall be established within the Fire Department and the Fire Chief may detail fulltime employees as inspectors, as shall be necessary for the enforcement of said codes. The inspector(s) shall work under the supervision of the Fire Chief and serve as the Fire Chiefs' designee for issues related to this code.

Sec. 3.3 Indoor Open-Flame Devices and Pyrotechnics

The use of indoor open flame devices and indoor pyrotechnics shall be prohibited within the City of Ellsworth.

Exception:

- A. Candles on Tables; Candles must be securely supported on substantial noncombustible bases and the candle flame must be protected.
- B. Candles are allowed in religious ceremonies if under the control of the facility management

Sec. 3.4 Permits and Approvals

3.4.1 The Fire Chief or designee shall have the authority to issue permits for the following operations within the jurisdiction:

A. Ventilation and Fire Extinguishing Systems for Commercial Cooking operations.

Installation of, replacement of, or modification to any ventilation control and automatic fire extinguishing system for commercial cooking operations; Required periodic maintenance performed in accordance with NFPA 96 and manufacture specifications is not considered a modification and does not require a permit.

B. Fire Extinguishing Systems.

Installation of, replacement of, or modification to any dry chemical, wet chemical or clean agent automatic fire extinguishing systems; Required periodic maintenance performed in accordance with NFPA and manufacture specifications is not considered a modification and does not require a permit.

C. Fire Alarm Systems and Related Equipment.

Installation, of, replacement of, or modification to any fire alarm and detection systems and related equipment; Required periodic maintenance performed in accordance with NFPA 72 and manufacture specifications is not considered a modification and does not require a permit.

D. Sprinkler Systems and Related Equipment.

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

E. Outdoor Open Fires

Open burning permit required. No person shall kindle, maintain or assist in maintaining any outdoor fire within the City without obtaining a permit from the Fire Chief or designee. The use of outdoor grills and fireplaces for recreational purposes such as preparing food is permissible without a permit provided that no fire hazard is created thereby.

3.4.2 Applications for permits shall be made to the Fire Chief or designee on forms provided by the Ellsworth Fire Department. Applications for permits shall be accompanied by additional information as required by the Fire Chief or designee.

3.4.3 The Fire Chief or designee shall review all applications submitted and issue permits as required. If an application for a permit is rejected, the applicant shall be advised in writing of the reasons for such rejection.

Exception: Open Burning Permits

3.4.4 A copy of the permit shall be posted or otherwise readily accessible at each activity site.

3.4.5 Any activity authorized by any permit issued under this Ordinance shall be conducted by the permittee or the permittee's agents or employees in compliance with all applicable requirements of this Ordinance and in accordance with the previously reviewed plans and specifications. No permit issued under this Ordinance shall be interpreted to justify a violation of any provision of this Ordinance or any other applicable law or regulation. Any addition to or alteration of previously reviewed plans or specifications shall be re-evaluated and reviewed in advance by the Fire Chief or designee, as evidenced by the issuance of a new or amended permit.

3.4.6 Any application for, or acceptance of, any permit requested or issued pursuant to this Ordinance shall constitute agreement and consent by the person making the application or accepting the permit to allow the Fire Chief or designee to enter the premises at any reasonable time to conduct such inspections as required by this Ordinance.

3.4.7 Any attempt to defraud or otherwise deliberately or knowingly design, install, service, maintain, operate, sell, offer for sale, falsify records, reports, or applications, or other related activity in violation of the requirements prescribed by adopted Codes shall be a violation of this Ordinance. Such violations shall be cause for immediate suspension or revocation of any related licenses, certificates, or permits issued by this jurisdiction and may be subject to civil legal action per Article IX.

3.4.8 The Fire Chief or designee shall have the authority to require an inspection of the activity site prior to the issuance of a permit.

3.4.9 A permit issued under this Ordinance shall continue until revoked or for the period of time designated on the permit. The permit shall be issued to one person or business only and for the location or purpose described in the permit. Any change that affects any of the conditions of the permit shall require a new or amended permit.

3.4.10 The Fire Chief or designee shall have the authority to grant an extension of the permit time period upon presentation by the permittee of a satisfactory reason for failure to start or complete the work or activity authorized by the permit.

Sec. 3.5 Certificate of Occupancy

For new construction, a Certificate of occupancy may not be signed by the Fire Chief or designee until all the equipment, devices or systems that were reviewed and permitted to be installed, have been installed and are operational, and have been tested by the installer and the testing witnessed by the Fire Chief or designee.

Sec. 3.6 Knox Box ©

The Ellsworth Fire Department utilizes the Knox Box© system. All facilities that are required to have a fire alarm or a sprinkler system or have an existing fire alarm or sprinkler system shall have a secure Knox Box©, containing keys to the entire building and current contact information. Multiple Knox Boxes may be required for larger structures or where there are multiple secured occupancies within a building or complex.

3.6.1 Complex with Mixed, Multiple Occupancies or Buildings

A complex with mixed or multiple occupancies or buildings shall have a Knox Box© located at each main entrance of the buildings or in a location that is approved by the Fire Chief or designee.

3.6.2 Single Buildings with Mixed and Multiple Occupancies

When two (2) or more occupancies are located in one common building, each individual occupancy shall have their own Knox Box© located at the front entrance of the occupancy or in a location as approved by the Fire Chief or designee.

3.6.3 Limited Fire Department Access Knox Box© Locations

When a building or buildings that provide limited fire department access due to the size of the building or buildings, location of the building or buildings on the property, property size or obstructions to fire apparatus or fire department personnel, Knox Box© or boxes shall be located as determined by the Fire Chief or designee.

3.6.4 Knox Box© Installation

The Knox Box© or boxes shall be installed as approved by the Fire Chief or designee, outside of the entrance with the closest access to the fire alarm panel, remote annunciator and/or the main entrance of the building or both. The Knox Box© or boxes shall be installed so as to be clearly visible to approaching fire apparatus. The Knox Box© or boxes shall be located at a height of 48 inches to 60 inches from the closest finished grade of the building.

3.6.5 Knox Box© Size

The Knox Box© shall be sized according to the number of keys required to gain entry into and throughout the building or individual occupancy. The number of keys shall not exceed the Knox Box© specifications for key storage. If changes to the building or individual occupancy require adding additional keys to the Knox Box© and the number of keys exceed the manufactures' specifications for key storage, then a new Knox Box© of the proper size shall be required to be installed.

3.6.6 Knox Box Use

All private, residential, non-residential, mixed-use, commercial or industrial, buildings or developments that utilize a key box rapid entry system shall utilize key boxes manufactured by the Knox Box © Company.

Sec. 3.7 Door Numbering

Occupancies with a gross area in excess of 3,000 square feet shall have all exterior doors numbered, sequentially in a clockwise manner from the main entrance on both the exterior and interior of the doors. The numbers shall be a minimum of 5 inches in height with a 6-inch background so as to be readily visible. Signs shall have white reflective numbers on a blue reflective background

Exception: One and Two family dwellings

Sec. 3.8 E-911 Road Naming System

All roads that serve two or more private, residential, non-residential, mixed-use, commercial or industrial, buildings or structures shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, service road or similar paved, gravel, or dirt thoroughfare. Road names shall be assigned by the City of Ellsworth E-911 Addressing Officer and approved by the Fire Chief, Police Chief, and Public Works Director or their designee. A road name assigned by the municipality shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

- A. No two roads shall be given the same name (ex. Pine Road and Pine Lane).
- B. No two roads shall have similar-sounding names (ex. Beech Lane and Peach Lane).
- C. Each road shall have the same name throughout its entire length.

3.8.1 Building Numbering

Buildings with a gross area of 3,000 square feet or more shall have numbers affixed to their exterior that identifies the building's assigned address. The number(s) will be located at the direction of the Fire Chief or designee. The size of the numbers shall be 11 inches in height with a 12-inch background to be readily visible. Signs shall have white reflective numbers on a blue reflective background.

Exception: One and Two family dwellings

3.8.2 Apartment Identification

Individual apartment identification of a multiple unit apartment building or complex of buildings shall be identified by utilizing capital letters, starting with "A". Letters size shall be no less than 3 inches and no more than 6 inches or as approved by the Fire Chief or designee. Apartment letter identification shall be assigned from left to right or "counter-clockwise." Letters shall be white reflective numbers on a blue reflective background.

3.8.3 Multi-Unit Commercial Building Individual Suites

Individual commercial units within a multi-unit commercial building shall be identified as "Suites" and by utilizing capital letters to identify the suite, starting with "A". Letter size shall be no less than 3 inches and no more than 6 inches or as approved by the Fire Chief or designee. Suites and their respective letter identification shall be assigned from left to right or "counter-clockwise." Letters shall be white reflective on a blue reflective background.

Sec. 3.9 One and Two Family Residence Address Numbering

One and Two family dwellings shall be numbered according to The City of Ellsworth **Unified Development Ordinance**, Article 8 Performance Standards, and Section 815.1. The number(s) will be located at the direction of the Fire Chief or designee. The numbers shall be a minimum of 3 inches in height to be readily visible. Numbers shall be white reflective numbers on a blue reflective background.

Sec. 3.10 Building Truss Signage

The owner of any commercial or industrial structure utilizing truss assemblies shall be required to mount warning signs meeting the following minimum requirements.

A. A sign of five (5) inches by four (4) inches; consisting of a piece of aluminum shall be used. In the center of the sign shall be a series of letters of white reflective lettering "R-T" or "F-T" or "R/F-T" which is 2 1/2 inches in height on a blue reflective background

1. R-T = Roof Truss
2. F-T = Floor Truss
3. R/F-T = Roof and Floor Truss

B. A sign shall be mounted directly to the right of each series of entrance doors (front, rear and sides of the building or structure) at a height of five (5) feet up from finished grade. Additional signs may be required by the Fire Chief or designee when the distance between entrance doors or the length of a series of entrance doors would require additional warning signs for visibility by Fire Department personnel. If the property has a Knox Box© on site then a sign shall be located directly above the Knox Box©

C. It shall be the responsibility of each property owner to mount, maintain and prevent obstruction of the warning sign mounted on the building or structure.

Sec 3.11 Features of Fire Protection Systems Documentation

Before requesting final review of the installation, the installing contractor(s) shall furnish a written statement stating that the Fire Protection system has been installed in accordance with reviewed plans and tested in accordance with the manufacturer's published instructions and the appropriate NFPA requirements.

3.11.1 A lockable documentation cabinet with a key supplied to the fire department to be located in the Knox Box©, shall be installed at an approved location at the protected premises. The size of the documentation cabinet shall be determined by the Fire Chief or his designee. Documentation cabinets shall be red in color. The documentation cabinet shall be prominently labeled "Fire Department Documents." For security reasons the location of the cabinet shall be determined by the Fire Chief or designee and the occupancy stakeholders.

3.11.2 All Fire Protection System documentation records (3.11.4) shall be stored in the documentation cabinet. The contents of the cabinet shall be accessible to the Ellsworth Fire Department and authorized personnel only.

3.11.3 Where the documentation cabinet is not in the same location as the fire alarm system control unit or the remote annunciator the location of the documentation cabinet shall be identified at the system control unit.

3.11.4 Final written documentation including floor plans as required by the Ellsworth Fire Department and appropriate NFPA standards shall represent the minimum documentation required for new systems and additions or alterations to existing systems.

A. Floor plan drawings shall be provided to the owner and the Ellsworth Fire Department.

A. Contractors Certificates, Record of Completion and any other supporting documentation for the occupancy Fire Protection Systems.

B. Occupancy contacts

C. Fire Protection Systems contacts

D. All signs and plaques are properly installed on all Fire Protection systems

Sec. 3.12 Elevator Numbering and Floor Recall

Prior to any elevator being designed and/or installed, the elevator contractor shall meet with the Fire Chief or designee and plans reviewed of the elevator. Numbering of floors and /or levels shall be reviewed and preapproved by the Fire Chief or designee. Elevator floor recall shall be reviewed and preapproved by the Fire Chief or designee.

Sec.3.13 Liquefied Petroleum Gas Piping and Fire rated walls

LPG piping shall not be installed or mounted within enclosed chase cavities of common fire rated firewalls, fire barrier walls and party walls of any rating.

Sec.3.14 Fire Apparatus Access Roads

1. Fire apparatus access roads shall be designed and maintained to support the imposed live and dead loads of fire apparatus and shall be provided with a surface as follows and be in compliance with City Ordinance; Chapter 56 Unified Development Ordinance, Article 9.

A. Commercial, Industrial developments and Multiple Family subdivisions (Apartments / Townhouses): shall have a paved all-weather driving surface.

B. Single and Duplex family residential subdivisions: shall have an All-weather driving surface.

2. The turning radius of a fire apparatus access road shall be as follows:
 - A. Not less than a thirty-two (32') foot inside turning radius.
 - B. Not less than a forty (40') foot outside turning radius.

Sec.3.15 Marijuana Facilities; Growing, Processing, Extraction, Testing

This section shall apply to all new facilities and occupancies engaging in marijuana (i.e. cannabis and extract derivatives) growing, processing, extraction, and/or testing.

All new facilities and occupancies engaging in marijuana (i.e. cannabis and extract derivatives) growing, processing, extraction, and/or testing, shall comply with the adopted ordinances and codes of the City of Ellsworth, Maine and shall comply with the minimum requirements of the 2018 Edition of NFPA 1 Chapter 38.

Extraction processes, and/or testing include but are not limited to the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The requirements set forth in this article are requirements specific only to marijuana processing and extraction and testing facilities.

**Article IV
Commercial Cooking Ventilation
And
Fire Extinguishing Systems**

Sec. 4.1 General

This article is intended to reduce the potential fire hazard from cooking operations, irrespective of the type of cooking equipment used and whether used in public or private facilities.

Sec. 4.2 Commercial Cooking Exhaust Hood Permit

No person shall install, alter, or replace a commercial cooking exhaust hood within the City of Ellsworth without first obtaining a permit from the Fire Chief or designee.

4.2.1 Commercial Cooking Exhaust Hood Plans and Specifications

Shop drawings and manufactures' specifications of the commercial cooking exhaust hood system shall be submitted for review with the permit application to the Fire Chief or designee. Drawings and specifications shall comply with NFPA 96.

4.2.2 Design and Maintenance

All systems shall comply with NFPA 96 "Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations" as adopted by the State of Maine. This standard shall not apply to facilities where all of the following are met:

- A. Only residential equipment is being used.
- B. Fire extinguishers located in all kitchen areas in accordance with NFPA 10, Standard for Portable Fire Extinguishers.
- C. Facility is not an Assembly occupancy.
- D. Subject to inspection and approval by the Fire Chief or designee.

Sec. 4.3 Commercial Cooking Hood Fire Extinguishing Systems Permit

No person shall install, alter, or replace a fire extinguishing system in public facilities or in public buildings within the City of Ellsworth without first obtaining a permit from the Fire Chief or designee.

4.3.1 Commercial Cooking Hood Fire Extinguishing Systems Plans

Shop drawings and manufacture specifications of the commercial cooking hood fire extinguishing systems shall be submitted for review with the permit application to the Fire Chief or designee. Drawings and specifications shall comply with NFPA 96 and NFPA 17A.

4.3.2 Design and Maintenance

All systems shall comply with the current NFPA Standards adopted by the State of Maine for wet chemical fire extinguishing systems.

4.3.3 Extinguishing System Service Technician Certification

Service technicians shall possess a certification issued by the manufacturer or testing organization in accordance with NFPA 17A for the type of commercial cooking hood fire extinguishing system being installed, serviced, maintained or replaced.

Sec. 4.4 Application Procedures

Application for a commercial cooking exhaust hood and/or commercial cooking hood fire extinguishing system permit shall be made to the Fire Chief or designee using forms provided by the Ellsworth Fire Department by the owner of the premises to be protected, or by the owner's authorized agent. The application form shall at a minimum require the name, telephone number and address of the owner of the premises to be protected, a designated agent if applicable and the installers of the commercial exhaust hood and/or commercial cooking hood extinguishing systems. The application form shall also require a description of the principal use of the premises to be protected, a description of the proposed system and the location of its installation and such other data as the Fire Chief or designee may reasonably require.

Sec. 4.5 Permit Revocations

The Fire Chief or designee may revoke the installation permit for any system. Such revocation shall not be effective until the Fire Chief or designee has given the permit holder or his designated agent written notice concerning the following:

A. Any deficiency identified during the installation and reported to the owner that is not corrected within 48 hours, or such longer time as the Fire Chief or designee may permit.

B. Any data provided in the application form for such system found to have been falsified willfully or through gross negligence of the applicant.

Sec. 4-6 Civil Violations

In addition to the foregoing grounds for revocation of an installation permit hereunder, the following events shall each constitute a civil violation, punishable as set forth in Article IX Penalties and Fines Sec. 9-4:

A. The installation, alteration or replacement of a commercial cooking exhaust hood system or commercial cooking hood fire extinguishing System in the absence of an effective permit signed by the Fire Chief or designee.

B. The falsification of any data provided on an installation permit application form for a commercial cooking ventilation system or any type of commercial cooking exhaust hood fire extinguishing system, done willfully or through gross negligence.

Article V Fire Alarm Systems

Sec. 5.1 General

This article recognizes the need for regulation of the installation and use of Fire Alarm Systems:

A. To avoid use of improper equipment,

B. To assure compliant installation of equipment,

C. To minimize accidental or malicious alarms,

D. To compensate for response of municipal resources in response to nuisance alarms,

E. To clarify the rights and responsibilities of the property owner and of the City.

Sec 5.2 Permit Required

No person shall install, alter, or replace a Fire Alarm System within the City of Ellsworth without obtaining a permit from the Fire Chief or designee.

5.2.1 Application Procedure

Application for an Alarm System shall be made to the Fire Chief or designee using forms provided by the Ellsworth Fire Department by the owner of the premises to be protected, or by the owner's authorized agent. The application form shall at a minimum require the name, telephone number and address of the owner of the premises to be protected a designated agent if applicable and the installers of the alarm system and if a monitored system, the name, address and phone number of the central receiving station that will monitor the alarm.

Sec 5.3 Design

All systems shall comply with NFPA 101 Life Safety Code, the Maine Uniform Building and Energy Code (MUBEC) and NFPA 72 National Fire Alarm and Signaling Code as adopted by the State of Maine.

5.3.1 Minimum Requirements

Fire alarm system designs shall meet the minimum requirements of NFPA 72, as adopted by the State of Maine. Fire alarm control panels shall be of the addressable design with a Point Source Identification Communicator; Digital Alarm Communicator Transmitter (ID DACT).

5.3.2 Design plans Submission

Plans, diagrams, system information, and device information shall be submitted to the Fire Chief or designee for review prior to issuance of a permit for the installation of the fire alarm system.

5.3.3 Drawings and Schematics

Shop drawings and manufacture specifications of the fire alarm system shall be submitted with the application. Drawings and specifications shall be in compliance with NFPA 72 and shall include:

- A. A description of the principal use of the premises to be protected.
- B. A description of the proposed system and the location of its installation.
- C. And such other data as the Fire Chief or designee may reasonably require.

5.3.4 Monitoring of Fire Alarm Systems:

All fire alarm systems shall be monitored by a U.L. Listed central receiving station

Exception: One and Two family dwellings

5.3.5 Audio Visual Notification and Voice Announcement Programming:

When activating the silencing mode of the fire alarm system, audio notification and/or voice announcement; the programming of the fire alarm system shall allow the audio notification and/or voice announcement to be canceled immediately and the visual strobe notification shall continue operating until the system is fully reset and restored.

Sec 5.4 Installation Testing and Maintenance

Only qualified technicians shall perform installation, testing and maintenance of fire alarm systems. Technicians shall meet the minimum qualification requirements of NPFA 72, as adopted by the State of Maine. When a new alarm system is installed, the Fire Chief or designee shall be notified 48 hours prior to the final testing of the fire alarm system. The Fire Chief or designee will schedule to be at the site of the installation to witness the test and receive training on the operation of the fire alarm system by the qualified fire alarm technician. A written copy of the test results shall be maintained on the premise and available to the Fire Chief or designee.

5.4.1 Location of FACP and Remote Annunciator

The fire alarm control panel or fire alarm remote annunciator shall be located by the building main entrance or as approved by the Fire Chief or designee.

5.4.2 Smoke detectors and Air supplies

Smoke detection devices shall not be located closer than three (3) feet from any air supply diffuser or return air opening. Smoke detectors shall not be located directly in the air stream of any return and supply registers of high velocity air supplies diffusers.

5.4.3 Exterior Weatherproof Horn /Strobe

A direct viewing type exterior weather proof horn /strobe shall be installed outside all individual buildings /tenant spaces that have a fire alarm system and or sprinkler system. The horn /strobe shall activate on the individual building/tenant space indicating/identifying the building with which the fire alarm or sprinkler has been activated.

Exception: One and Two family dwellings

5.4.4 Programming of Fire Alarm initiation devices

Programming identification of all fire alarm devices including but not limited to, manual initiation, automatic initiation and zones, shall be preapproved by the Fire Chief or designee

Sec. 5.5 Prohibited Systems

No system shall be permitted which automatically transmits to the Ellsworth Dispatch Center

5.5.1 City Property Option

At the discretion of the City Council, property owned by the City of Ellsworth that is protected by a fire alarm system may automatically transmit to the Ellsworth Dispatch Center.

Sec. 5.6 Alarm Responses

The property owner or designated agent(s) shall respond to each alarm at the request of the fire department for securing the premises.

Sec. 5.7 Nuisance Alarm Service and Repair

In the event the activation of an alarm system is deemed by the Fire Chief or designee to be a nuisance alarm, the building owner shall be required to return a completed report of service/repair or a plan of correction within fifteen (15) days of the fire alarm activation to the Fire Chief or designee. The report shall verify that:

A. The fire alarm system has actually been examined by a qualified fire alarm technician.

B. A bona fide attempt has been made to identify and correct any defect of design, installation or operation of the fire alarm system which was identifiable as the cause of the nuisance alarm activation.

C. Failure to return a report of service/repair or a plan of correction within the fifteen (15) day period shall result in a written warning and reminder of section 5.8 of this article for the nuisance alarm.

Sec. 5.8 Nuisance Alarms

The owner of the property of any alarm system that causes the transmittal of a nuisance alarm three (3) times within a twelve (12) month rolling cycle shall pay a penalty of \$500 for each subsequent nuisance alarm in excess of that number.

5.8.1 The Fire Chief or designee shall give suitable written warning to any building owner, or to his designated agent whose alarm system sends a third nuisance alarm within a twelve (12) month rolling cycle.

5.8.2 In the event an alarm is activated as a result of a natural or unnatural event beyond the property owner's control the alarm activation will not be considered a nuisance alarm.

Sec. 5.9 Fire Alarm system Documentation

Color coded as-built drawing floor plans shall be provided indicating the specific building zones or areas being protected by the Fire Alarm system.

5.9.1 Color coded as-built drawing floor plans shall be submitted in BOTH print form and digital PDF of a size and "drawing layers" to be approved by the Fire Chief or designee.

5.9.2 All Fire Alarm documentation records shall be stored in the Fire Department documentation cabinet.

5.9.3 For new construction, a Certificate of Occupancy may not be signed by the Fire Chief or designee until the required documentation has been submitted and reviewed by the Fire Chief or designee.

Sec. 5.10 Civil Violations

The following events shall each constitute a civil violation, punishable as set forth on Article IX Penalties and Fines Sec. 9-4:

- A. The installation, alteration or replacement of an Alarm System in the absence of a permit therefore signed by the Fire Chief or designee.
- B. The falsification of any data provided on an application form for an Alarm System, done willfully or through gross negligence.

Sec. 5.11 No Enlargement of Liability

Neither the issuance of a permit under this Ordinance, nor the installation of an alarm system pursuant to such a permit, create any obligation, duty or liability on the part of the City of Ellsworth, its officers, agents, or employees, nor does any obligation, duty or liability, exist, in the absence of such a permit or installation.

Article VI Sprinkler Systems

Sec. 6.1 Design and Maintenance

All systems shall comply with NFPA 101 Life Safety Code, NFPA 13 Standard for the Installation of Sprinkler Systems, NFPA 13D “Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes” or NFPA 13R “Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height” and the Maine Life Safety System according to the State Fire Marshal’s Rules and Policies for sprinkler systems, and the Maine Uniform Building and Energy Code (MUBEC) as adopted by the State of Maine.

Sec. 6.2 Design Plans

All plans for construction of or alteration to fire sprinkler systems must be submitted for review to the Fire Chief or designee along with a State Fire Marshal’s Office installation permit prior to the installation of the sprinkler system. A copy of the State Fire Marshal’s Office permit shall be forwarded to the Ellsworth Fire Department Fire Chief or designee.

6.2.1 The State Fire Marshal’s preliminary review permit is not acceptable for installation of sprinkler systems.

Sec. 6.3 Acceptance testing for new installation

The Fire Chief or designee shall be notified 48 hours prior to the final acceptance test of the underground and aboveground piping system. The Fire Chief or designee will schedule to be at the site of the installation to witness the underground flush test and the acceptance test. Test procedures shall follow the requirements of the current edition of NFPA 13 adopted by the State Fire Marshal’s Office, and the City of Ellsworth Water Department policies and procedures. After the testing, contractor test certificates shall be filed with the Fire Chief or designee.

6.3.1 Required acceptance test certificates

- A. Contractor's Material and Test Certificate for Underground Piping (NFPA 13)

- B. Contractor's Material and Test Certificate for Aboveground Piping (NFPA 13)

Sec. 6.4 Inspection, Testing, and Maintenance

Any building containing a sprinkler system shall have the system inspected, tested, and maintained by an inspector licensed by the State Fire Marshal's Office. Inspections, testing, and maintenance shall be in accordance with NFPA 25, to provide at least the same level of performance and protection as designed. A written copy of the test results shall be maintained on the premises and available to the Fire Chief or designee.

Sec 6.5 Responsibility for Maintenance

The owner, occupant, or agent of any occupied or unoccupied buildings or portions thereof having a sprinkler system in place, whether or not such a system is required by this Ordinance, shall maintain all sprinklers, standpipe systems, and all component parts in workable condition at all times. It shall be unlawful for any owner, occupant, or agent of either to reduce the effectiveness of the protection, those systems provide. This Section does not prevent the owner, occupant or agent of a building from temporarily reducing or discontinuing the protection when necessary, in order to conduct testing, repairs, alterations or additions to the system, provided that the testing, repairs, alterations or additions are done in such a way to avoid the creation of a safety hazard, follow the requirements of NFPA 25, and the requirements of the State Fire Marshal's sprinkler technical policy.

6.5.1 Notification of System Shutdown or Impairments

Inspection, testing, maintenance, and impairment of water based fire protection systems shall be implemented in accordance with procedures meeting those established in National Fire Protection Association (NFPA) 25 Standard for the Inspection, Testing and Maintenance of Water Based Fire Protection Systems, in accordance with the manufacturer's instructions, and in accordance with the City of Ellsworth Water Department policies and procedures.

- A. The property owner or designated representative shall notify the authority having jurisdiction, the Fire Chief or designee, the City of Ellsworth Water Department, and the alarm receiving facility before testing or shutting down a system or its supply.

- B. The notification of system shutdown shall include the purpose for the shutdown, the system or component involved, and the estimated time of shutdown. All preplanned and emergency impairments shall follow the procedures of NFPA 25 Chapter 15.

C. The authority having jurisdiction, the Fire Chief or designee, the City of Ellsworth Water Department, and the alarm receiving facility shall be notified when the system, supply, or component is returned to service.

D. All Impairments, whether emergency or preplanned, to water-based fire protection systems shall comply with NFPA 25.

Sec 6.6 Sprinkler Risers

Any building having one or more sprinkler risers shall have each riser physically identified. Each riser shall be monitored by an alarm system that will provide the individual riser identification upon sprinkler system activation.

6.6.1 Multi-Story Building Control Valves

In multi-story buildings (2 or More) protected throughout by an approved, supervised automatic sprinkler system in accordance with NFPA 101.9.7, a electronically supervised sprinkler control valve and electronically supervised water-flow device shall be provided for each floor.

6.6.2 Special Structures or Construction Features or Areas

Special structures or construction features or areas protected by an approved, supervised automatic sprinkler system in accordance with NFPA 101.9.7, shall be provided with an electronically supervised control valve and electronically supervised water-flow device.

6.6.3 Elevator Shaft Protected by a Sprinkler System

If an elevator shaft is protected by an approved, supervised automatic sprinkler system then that portion of the system protecting the shaft shall be provided with an electronically supervised control valve and electronically supervised water-flow device.

6.6.4 Control Valves and Waterflow Devices

Electronically supervised control valves and electronically supervised water-flow devices shall be connected to the fire alarm system in such a manner that tampering with the control valve will activate a supervisory signal of the alarm system indicating the location of the control valve. The operation of the sprinkler waterflow device will activate a full fire alarm signal. Control valves and waterflow devices shall be installed in an easily accessible location and shall be readily identified. Identification markings shall be legible from the finished floor level.

6.6.5 Testing Bypass-Loop for Sprinkler System Backflow Valves

A Bypass loop shall be installed to accomplish the required annual full forward flow test of the sprinkler system backflow valve. The Bypass loop shall be installed around the sprinkler check valve in the fire department connection line with a control valve in the normally closed position. The normally closed control valve shall be chained and locked and may be monitored by the fire alarm system that shall activate a fire alarm system supervisory signal when the valve is operated.

Exception: 13-D and 13-R systems

Sec. 6.7 New Building Construction

An approved automatic sprinkler system shall be installed in all areas of all new buildings as required by the currently State adopted NFPA 101 Life Safety Code, The Maine Uniform Building and Energy Code (MUBEC) and State Fire Marshal's Rules and Policies for sprinkler systems.

Exception: One & Two family dwellings (See Article 7, Section 7.5, Option 3)

Sec. 6.9 Additional Requirements of Sprinkler Systems

All Automatic Sprinkler Systems shall be monitored by an approved addressable fire alarm system with a Point Source Identification Communicator; Digital Alarm Communicator Transmitter (ID DACT) and by an approved, proprietary alarm receiving facility, a remote station, or a central station as defined in N.F.P.A. 72 – National Fire Alarm Code.

A. A multiple unit apartment building equipped with an Automatic Sprinkler System or an apartment in a mixed and /or multiple use complex of building equipped with an Automatic Sprinkler System shall include an evacuation alarm, which will sound an audible and visual alarm within each individual living space / area and throughout the entire building common areas when the sprinkler system is activated.

B. A monitored tamper switch at the system shut off which transmits a nonemergency trouble signal to the alarm monitoring station shall be installed.

C. An outside water flow alarm shall be installed.

Exception: One & Two family dwellings

D. Exterior Weatherproof Horn /Strobe

A direct viewing type exterior weatherproof horn /strobe shall be installed outside all individual buildings /tenant spaces that have a fire alarm system and or sprinkler system. The horn /strobe shall activate on the individual building/tenant space indicating/identifying the building with which the fire alarm or sprinkler has been activated.

Exception: One and Two family dwellings

Sec. 6.10 Fire Department Connections

Any building requiring the installation of a Standard 13, 13D, 13R Sprinkler System shall have a fire department connection as required by the standard the Fire Chief or designee.

6.10.1 Fire Department Connection Location and size

A. The location of the fire department connection shall be approved by the Fire Chief or designee and properly marked "Fire Department Connection".

B. All Fire Department Connections shall be configured with "self-locking" 4-inch Storz couplings, and a 30-degree elbow and cap.

Exception: The size of the Fire Department Connection, for systems meeting the NFPA 13-R, or State of Maine approved life safety systems may be 2.5-inch NH thread with a cap.

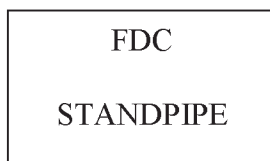
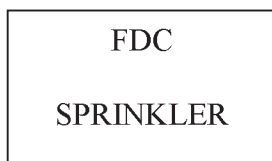
6.10.2 Fire Department Connection Signage

A. Any building served by more than 1 (one) Sprinkler and or standpipe, the fire department connection shall have signs approved by the Fire Chief or designee clearly noting what each connection serves.

B. Where a fire department connection services multiple buildings, structures, locations, or partial buildings structures or locations a sign at the fire department connection shall be provided indicating the buildings, structures, or locations served.

C. Fire Department Sprinkler and/or Standpipe connection collars shall be of a contrasting color of the building to which they are installed.

D. Sprinkler and Standpipe Fire Department connections shall have a rectangular sign mounted above the connection or connections. The sign shall have white reflective letters on a blue background. Letters shall be 1 inch in height. Signs shall indicate the following:



E. When a system is temporarily removed from service regardless of an emergency or preplanned, a tag shall be posted at each fire department connection and system control valve, indicating which system, or part thereof, has been removed from service

6.10.3 Fire Department Connection Obstruction

Any person or persons, property owner or occupant shall immediately clear an obstructed fire department sprinkler connection (FDC) of, but not limited to snow, dumpsters, miscellaneous materials or any other obstructions.

Sec. 6.11 Sprinkler system Documentation

Color coded as-built drawing floor plans shall be provided indicating the specific building zones or area(s) being protected by the sprinkler system. The drawings shall indicate by color code which riser is protecting an individual zone or area.

6.11.1 Occupancies with multiple sprinkler risers shall have each individual sprinkler riser identified with a sign indicating which zone the riser is protecting.

6.11.2 Occupancies with sprinkler risers that supply individual isolated electronically supervised control valve(s) and electronically supervised water-flow device(s) shall provide color-coded as-built drawing floor plans indicating the location of the control valve(s) and water-flow device(s) at the sprinkler riser.

6.11.3 Occupancies with isolated individual electronically supervised control valve(s) and electronically supervised water-flow device(s) shall indicate the physical location(s) of the device(s) on the floor plan(s). The floor plan(s) shall also show the area(s) that the electronically supervised control valve(s) and electronically supervised water-flow device(s) are protecting.

6.11.4 Color-coded as-built drawing floor plans shall be protected and waterproof. Drawings shall be framed and properly mounted on the wall of the main sprinkler riser room.

6.11.5 Color coded as-built drawing floor plans shall be of a size to be determined and approved by the Fire Chief or designee to provide fast and easy reference.

6.11.6 A set of sprinkler system documentation records and as-built drawing floor plans shall be stored in the occupancy Fire Department Documentation cabinet. Floor plans shall be submitted in BOTH print form and digital PDF of a size and “drawing layers” to be approved by the Fire Chief or designee.

6.11.7 For new construction, a Certificate of Occupancy may not be signed by the Fire Chief or designee until the required sprinkler system documentation has been submitted, reviewed and approved by the Fire Chief or designee.

Article VII.

Water Supplies for Fire Fighting

Sec. 7.1 Fire Hydrants

No person shall install, relocate, modify or disconnect from the City of Ellsworth supply main for service, any fire hydrant, whether such fire hydrant is located in a public way or on private property, except in accordance with the requirements of this section.

7.1.1 All hydrant systems shall comply with NFPA 24.

7.1.2 All fire hydrants shall be maintained in proper operating condition at all times.

7.1.3 Owners of hydrants shall be responsible for all required inspections and maintenance including but not limited to, removing accumulations of snow/ ice from the fire hydrant(s) and draining the hydrant(s) prior to winter freeze.

7.1.4 Hydrant inspections shall be conducted at least once a year according to NFPA 25 Standard for the Inspection, Testing and Maintenance of Water Based Fire Protection Systems. Yearly inspection results shall be maintained by the owner and available to the Fire Chief or designee upon request.

7.1.5 If at any time an inspection reveals that a fire hydrant is inoperative or not in proper operating condition, the Fire Chief or designee and the City of Ellsworth Water Department shall be immediately notified.

7.1.6 Water mains proposed to provide water supply to fire hydrants in private, residential, non-residential, mixed-use or commercial subdivisions or developments, shall be at-least six (6) inches in diameter.

7.1.7 All private, residential, non-residential, mixed-use or commercial subdivisions or developments shall install hydrants in compliance with the National Fire Protection Association Fire Code; NFPA 1, Chapter 18.4 and 18.5; 2015 Edition.

7.1.8 No fire hydrant shall be so installed, relocated or modified unless it conforms to the specifications as acceptable to the Ellsworth Water Department, the City of Ellsworth, and its ordinances.

7.1.9 Upon the installation, relocation or modification of any fire hydrant, the owner or contractor for the owner of any such fire hydrant shall notify the City of Ellsworth Water Department and the Fire Chief or designee immediately after installation, relocation or modification of such fire hydrant has been completed.

Sec. 7.2 Fire Protection at Construction Sites

As soon as a construction site begins to accumulate combustible materials, a water supply for fire protection either temporary or permanent, may be required at the discretion of the Fire Chief or designee. The Fire Chief or designee shall approve the water supply.

Sec.7.3 Required Public Water Supply for Fire Protection

Any proposed, residential, non-residential, mixed-use or commercial subdivisions or development whose vehicular entrance or closest point of said property is located within 800 (eight-hundred) feet to a public water line must connect to the public water system. The developer shall provide a written statement from the Water Department that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The developer shall be responsible for paying the costs of system improvements necessary to serve the development. The minimum size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Department Superintendent and the Fire Chief or designee.

Sec. 7.4 Fire Hydrant Obstructions

7.4.1 No person or persons shall obstruct or permit to be obstructed by any means any fire hydrant located within the City of Ellsworth. A 10 (Ten) foot area around any hydrant shall be clear of all obstructions.

7.4.2 Nothing shall be attached or affixed to any hydrant.

Exception: Hydrants are permitted to be fitted with location indicators.

7.4.3 Hydrants shall not be decorated.

Exceptions:

A. Hydrants owned by the City of Ellsworth are permitted to be painted by the Ellsworth Water Department or the Ellsworth Fire Department.

B. Private Hydrants shall be painted in conjunction with the City of Ellsworth hydrant flow color coding requirements.

7.4.4 Any person or persons, property owner or occupant causing snow to obstruct any fire hydrant shall immediately clear the obstructed fire hydrant. Failure to clear the obstructed hydrant shall result in the City of Ellsworth clearing ~~of~~ the fire hydrant. The person or persons, property owner or occupant responsible for obstructing the fire hydrant may be liable for all costs associated therewith.

Exception: Highway crews performing snow removal from State and Local roadways

Sec. 7.5 Fire Protection for Subdivisions

In areas of the City where landowners elect to develop subdivisions for residential or commercial use in compliance with the Land Use Ordinances of the City of Ellsworth, water supplies for fire suppression purposes shall be provided. A fire protection option shall be decided upon and that option shall be included in the recorded deeds, and identified as part of the property covenant requirements on the final Mylar drawings signed by the Planning Board. Water supplies for fire suppression purposes shall be provided by one of the following options:

Option 1: Water supply for fire protection shall be provided by water mains and fire hydrants as specified in this Article.

Option 2: Water supply for fire protection shall be provided by installing underground stationary water tanks of no less than ten thousand (10,000) U.S. gallons capacity, at not more than 1000-foot intervals measured along vehicular access and travel routes throughout the development. Minimum requirements for a Static Water Supply System shall comply with the most current edition of the Nation Fire Protection Association; NFPA 1142 Standard on Water Supplies for Suburban and Rural Firefighting.

Option 3: The installation of automatic sprinkler systems per NFPA 13-D in one and two family dwellings and Townhouses as defined by the MUBEC International Residential Code and the State Fire Marshal Rule or NFPA 13-R in all other residential structures and NFPA 13 in any commercial structure.

A. Fee Schedule for NFPA 13-D Inspections:

When the building permit is applied for, the applicant shall pay a fee to the City of Ellsworth to cover the rough-in and final inspections of the NFPA 13-D sprinkler system. Fees shall be paid accordingly:

1. One and Two family dwellings \$100.00
2. Multiple-family Townhouse style dwellings: \$50.00 per living unit

7.5.1 Open Static water sources

Fire protection water supply from penstocks, flumes, rivers, lakes, ponds, fire ponds, reservoirs or private pools for New Subdivisions shall be prohibited options for fire protection within the City of Ellsworth.

7.5.1.1 Existing Open Static Water Sources

All previously approved and existing open static dry hydrant water supply sources shall be accessible year-round. An existing open water supply source shall be maintained as approved, or shall be replaced according to Option #2 of section 7.5.

The chosen option narrative of 7.5 shall be included in the recorded deeds, and identified as part of the property covenant requirements on the final Mylar drawings signed by the Planning Board.

7.5.2 Fire Protection Maintenance

Upkeep and maintenance of the chosen fire protection option shall remain the responsibility of the developer, property owner or road/property owners association.

Exception: Water mains and hydrants that are accepted by the Ellsworth Water Department as public infrastructure.

7.5.3 Responsible Party Documentation

Documentation shall be filed identifying the responsible party whether the developer, property owner or road/property owners association, describing in detail, the responsibilities of upkeep and maintenance of the chosen fire protection option. Documentation shall be noted on site plans and in the Homeowners Association Bylaws, Covenants, Conditions and Restrictions and the property deed that is approved by the Ellsworth Planning Board and the Ellsworth Fire Department Fire Chief or designee prior to the Planning Board's final signature of approval.

Article VIII Definitions

Activity Site: The physical location, property or structure, where any activity requiring a permit under this ordinance will be conducted.

Alteration: Any structural change to an existing structure other than repair or addition.

Assembly Occupancy: An occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load. [NFPA 101:3.3]

Apartment Building: A building or portion thereof containing three or more dwelling units with independent cooking and bathroom facilities. (NFPA 101-3.3.32.3)

Approved Automatic Sprinkler System: A system installed in accordance with National Fire Protection Association Standards and approved by the State Fire Marshal's Office.

Approved Supervisory Alarm System: A system, which complies with the requirements of N.F.P.A. 72 National Fire Alarm and Signaling Code.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, use or enclosure of persons, animals or property.

Ellsworth Dispatch Center: The Dispatch Center for the City of Ellsworth public safety departments.

Fire Chiefs' designee: The position of Fire Inspector shall be established within the Fire Department as the Fire Chiefs' designee. The Fire Chief may detail full-time employees as inspectors as shall be necessary for the enforcement of said codes. The inspector(s) shall work under the supervision of the Fire Chief and serve as the Fire Chiefs' designee for issues related to this code.

Fire Alarm System: Any mechanism, equipment or device designed to automatically transmit a signal, message or warning indicating fire, water flow, emergency or like need for public safety assistance, from any mode, telephone, dialer, private third party monitors, etc., directly or indirectly to the Ellsworth Dispatch Center.

Indoor Open Flame Devices: Any device including but not limited to, decorative torches, flaming batons, flaming swords, fuel fire lanterns, flares, candles, or any other machines or process liable to start or cause a fire.

Nuisance Alarm: A nuisance alarm means the activation of any alarm system including the alarm being transmitted to the Ellsworth Dispatch Center, which results in requiring a response from the fire department. A nuisance alarm shall include, but shall not be limited to; alarms caused by malfunctioning equipment, mechanical failure, improper installation, lack of proper maintenance, negligent activation of the alarm, or improperly monitored equipment.

One- and Two-Family Dwelling Unit: A building that contains not more than two dwelling units with independent cooking and bathroom facilities. (NFPA 101-3.3.61.2)

Private Fire Hydrant: A valved connection on a water supply system having one or more outlets and that is used to supply hose and fire department pumpers with water on private property. Where connected to a public water system, the private hydrants are supplied by a private service main that begins at the point of service designated by the AHJ, usually at a manually operated valve near the property line.

Pyrotechnics: Controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, and dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume.

Sprinkler Riser: An aboveground horizontal or vertical pipe between the water supply and the overhead piping to which the sprinklers are installed. A sprinkler riser is fitted with a control valve and a waterflow alarm device located between the water supply and the overhead piping. Sprinkler riser waterflow alarm device activates the fire alarm system when the sprinkler system is in operation.

Throughout: In or through all parts of a structure including normally unoccupied areas and spaces. "Throughout; as being throughout all the building and areas within the building." NFPA, Fire Protection Handbook

Townhouse: A single-family *dwelling unit* constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a *yard* or public way on at least two sides.

Unit of Occupancy.: Any interior space with defined boundaries described in a deed, lease, license or agreement in which a discrete business, commercial, office, service, professional, institutional or industrial activity is conducted and which is separated from any other business, commercial, office, service, professional, institutional or industrial activity by interior or exterior walls.

Trusses: Trusses are pre-engineered wood or steel, fabricated with diagonal members and used to construct roofs and floors.

Article IX Penalties and Fines

Sec. 9.1 Authority

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

Sec. 9.2 Code Violations

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

Sec. 9.3 Notice of Violation

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

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

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

Sec. 9.4 Penalty

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

Sec. 9.5 Licenses

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

Sec. 9.6 Appeals

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

Sec. 9.7 Means of Appeals

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

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

Sec. 9.8 Board of Appeals

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

Appendix A
Code, Statutes, Rules
State of Maine
Adopted National Fire Prevention Association (NFPA) Standards
And
Maine Unified Building and Energy Code (MUBEC)

- **Fire Prevention Code**
 - NFPA #1, Uniform Fire Code, **2006** edition
- **Water-Based Fire Protection Systems**
 - NFPA #13 Standard for the Installation of Sprinkler Systems, **2016** edition.
 - NFPA #13D Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, **2016** edition
 - NFPA #13R Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height, **2016** edition

- NFPA #14 Standard for the Installation of Standpipe, Private Hydrants and Hose Systems, **2013** edition
- NFPA #15 Standard for Water Spray Fixed Systems for Fire Protection, **2012** edition
- NFPA #16 Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, **2011** edition
- NFPA #20 Standard for the Installation of Stationary Fire Pumps for Fire Protection, **2013** edition
- NFPA #22 Standard for Water Tanks for Private Fire Protection, **2013** edition
- NFPA #24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, **2013** edition
- NFPA #25 Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, **2014** edition
- NFPA #214 Standard on Water Cooling Towers, **2011** edition
- NFPA #318 Standard for the Protection of Semiconductor Fabrication Facilities, **2015** edition
- NFPA #409 Standard on Aircraft Hangers, **2011** edition
- NFPA #418 Standard for Heliports, **2011** edition
- NFPA #750 Standard on Water Mist Fire Protection Systems, **2015** edition

- **Fire Extinguishers**
 - NFPA #10, Standard for Portable Fire Extinguishers, **2007** edition

- **Fire Extinguishing Systems**
 - NFPA #11, Standard for Low, Medium, and High- Expansion Foam Systems, **2005** Edition
 - NFPA #12, Standard on Carbon Dioxide Extinguishing Systems, **2008** edition
 - NFPA #17, Standard for Dry Chemical Extinguishing Systems, **2009** edition
 - NFPA #17A, Standard for Wet Chemical Extinguishing Systems, **2009** edition
 - NFPA #18, Standard on Wetting Agents, **2006** Edition
 - NFPA #2001, Standard on Clean Agent Fire Extinguishing Systems, **2008** edition

- **Dry Cleaning Plants**
 - NFPA #32, Standard for Dry cleaning Plants, **2007** edition

- **Spray Applications**
 - NFPA #33, Standard for Spray Application Using Flammable or Combustible Materials, **2007** edition

- **Dip Tanks**
 - NFPA #34, Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids, **2007** edition

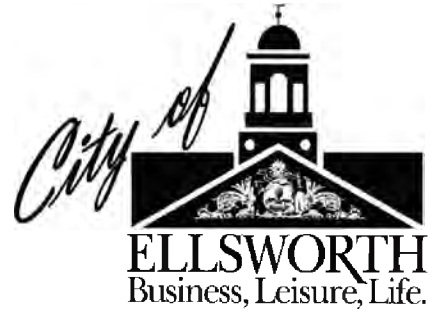
- **Stationary Combustion Engines and Gas Turbines**
 - NFPA #37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, **2006** edition

- **Bulk Oxygen and Hydrogen Systems**
 - NFPA #55, Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, **2005** edition

- **Welding, Cutting and Allied Processes and Acetylene Cylinder Charging Plants**
 - NFPA #51, Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting and Allied Processes, **2007** edition
 - NFPA #51A, Standard for Acetylene Cylinder Charging Plants, **2006** edition
 - NFPA #51B, Standard for Fire Prevention During Welding, Cutting, and other Hot Work, **2009** edition
- **National Fuel Gas Code**
 - NFPA #54, National Fuel Gas Code, **2009** edition
- **Fire Protection Rules for Medical Facilities and Equipment**
 - NFPA #99, Standard for Health Care Facilities, **2005** edition
 - NFPA #99B, Standard for Hyperbaric Facilities, **2005** edition
 - NFPA #110, Standard for Emergency and Standby Power Systems, **2005** edition
- **Storage and Handling of Liquefied Petroleum Gases**
 - NFPA #58, Liquefied Petroleum Gas Code, **2008** edition
 - NFPA #59, Utility LP-Gas Plant Code, **2008** edition
- **National Fire Alarm Code**
 - NFPA #72, National Fire Alarm Code, **2007** edition
- **Carbon Monoxide Alarms**
 - NFPA # 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (portions of), **2009** edition
- **Vapor Removal From Cooking Equipment**
 - NFPA #96, Standard for the Ventilation Control and Fire Protection of Commercial Cooking Operations, **2008** edition
- **Fire Safety in Buildings and Structures**
 - NFPA #80, Standard for Fire Doors and other Opening Protectives, **2010** edition
 - NFPA #101, Life Safety Code, **2009** edition
 - NFPA #220, Standard on Types of Building Construction, **2006** edition
- **Tents and Grandstands Air Supported Structures for Places of Assembly**
 - NFPA #102, Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures, **2006** edition
- **Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances**
 - NFPA #211, Standard for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances, **2006** edition
- **Purged and Pressurized Enclosures for Electrical Equipment**
 - NFPA #496, Standard for Purged and Pressurized Enclosures for Electrical Equipment, **2008** edition
- **Display of Fireworks**
 - NFPA #1122, Code for Model Rocketry, **2008** edition
 - NFPA #1123, Code for Fireworks Display, **2006** edition

- NFPA #1124, Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles, **2006** edition
- **Pvrotechnics Before a Proximate Audience**
 - NFPA #160, Standard for Flame Effects Before an Audience, **2006** Edition
 - NFPA #1126, Standard for the Use of Pyrotechnics before a Proximate Audience, **2006** edition
- **Manufacture. Transportation. Storage and Use of Explosive Materials**
 - NFPA #495, Explosive Materials Code, **2006** edition
- **Flammable and Combustible Liquids**
 - NFPA #30, Standards for Flammable and Combustible Liquids, **2008** edition
 - NFPA #30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, **2008** edition
 - NFPA #30B, Code for Manufacture and Storage of Aerosol Products, **2007** edition
 - NFPA #385, Standard for Tank Vehicles for Flammable and Combustible Liquids, **2007** edition
- **Consumer Fireworks**
 - NFPA #1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles: Chapter 7, *Retail Sales of Consumer Fireworks*, **2006** edition
 - **Maine Uniform Building and Energy Code (MUBEC)** (International Building Code / International Residential Code / International Energy Code / International Existing Building Code)
 - **Office of State Fire Marshal, Fire Sprinkler Policy and Rule**

**CHAPTER 5 SEWER ORDINANCE
CITY OF ELLSWORTH, MAINE**



Adopted April 18, 2005

Revised June 19, 2006

Revised July 17, 2006

Revised June 18, 2007

Revised May 17, 2010

Revised April 18, 2011

Revised March 18, 2013

Revised April 15, 2013

Revised November 18, 2013

Revised April 17, 2017

Revised December 18, 2017

Revised January 8, 2018

A true copy –

Attest: _____

Heidi-Noel Grindle

City Clerk

An ordinance to promote the public's general health, safety, and welfare, to prevent disease by regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer systems, and providing penalties for violations thereof in the City of Ellsworth, County of Hancock, State of Maine.

ARTICLE I - DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms in this ordinance will be as follows:

"A.S.T.M." shall mean American Society for Testing and Materials.

"B.O.D." (Denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter (Mg/L).

"Builder" shall mean any person, persons, or corporation who undertake to construct, either under contract or for resale, any habitable building.

"Building Drain" shall mean the part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning eight (8) feet outside the inner face of the building.

"Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

"City" shall mean the City of Ellsworth, Maine.

"City Council" shall mean the duly elected officers of the City of Ellsworth or their authorized deputy or representative.

"Contractor" shall mean any person, firm, or corporation approved by the City Council to do work in the City of Ellsworth.

"D.E.P." shall mean Maine Department of Environmental Protection.

"Developer" shall mean any person, persons, or corporation who undertake to construct simultaneously more than one housing unit on a given tract or land subdivision.

"Drawings" shall mean the drawings that show the character and scope of the sewer extension work to be performed and which have been prepared by the Owner's Engineer and approved by the City and/or its Consulting Engineer.

"Dwelling, Multiple" shall mean a building designed or intended to be used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units, including apartment buildings and condominiums, but excluding single-family dwellings and two-family dwellings.

"Dwelling, Single-Family" shall mean a building designed or intended to be used exclusively for residential occupancy by one (1) family only and containing only one (1) dwelling unit.

"Dwelling, Two-Family" shall mean a building designed or intended to be used exclusively for residential occupancy by two (2) families and containing two (2) dwelling units, but excluding single-family dwellings.

“Engineer” (also “Consulting Engineer” and “Engineering Consultant”) shall mean the professional engineer or engineering firm or corporation hired by the Owner to design and/or oversee the construction and start-up of the sewer extension project or hired by the City to assist with review of the Sewer Extension design and oversight of construction of said project.

“Family” shall mean one (1) or more persons occupying dwelling unit as a single housekeeping unit whether or not related to each other by birth, marriage, or adoption, but not to consist of more than five (5) unrelated persons.

“Floatable Oil” is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

"Garbage" shall mean solid wastes from the retail preparation, cooking, and dispensing of food and from the retail handling, storage, and sale of produce.

“Grease” shall mean the material removed from a grease interceptor (trap) serving a restaurant or other facility requiring such grease interceptors. Also means volatile and nonvolatile residual fats, fatty acids, soaps, waxes, and other similar materials.

"Industrial Wastewater or Non-Domestic Wastewater" shall mean the wastewater or waterborne wastes resulting from any process of industry, manufacturing trade or business or from development of any natural resources as distinct from domestic wastewater, sewage or unpolluted water. Industrial wastewaters may or may not be discharged separately from sanitary wastewaters. For a combined discharge, the City shall determine if the discharge meets the definition of “industrial wastewater”.

"Manager" shall mean the City Manager of Ellsworth or the individual designated by the City Council to perform this function, or the authorized deputy, agent or representative of this individual.

"Natural Outlet" shall mean any outlet, not man made, into a watercourse, ditch, pond, lake, or other body of surface or ground water.

“Non-residential” shall include, but not be limited to, multiple dwellings.

"Owner" shall mean any individual, firm, company, association, society, or group having title to real property.

"Person" shall mean any individual, firm, company, association, society or group.

"pH" shall mean the logarithm of the reciprocal of the concentration of the hydrogen ions in grams-ionic weight per liter of solution, and is a term used to express the relative acidity or alkalinity of a substance or solution.

"Property Line" shall mean curb line if the building sewer is to connect with the public sewer in a public street. "Property Line" shall mean the edge of a sewer right-of-way in those instances where the buildings sewer connects to the public sewer in a right-of-way.

"Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food or produce that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in dimension.

"Public Sewer" shall mean a sewer in which all owners of abutting property have equal rights and which is

controlled by public authority.

“Residential Service” shall mean sewer service to single-family and two-family dwellings. Sewer service to multiple dwellings shall be considered “other non-residential service”.

"Sanitary Sewer" shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

"Sewage" shall mean a combination of the water carried wastes from residence, businesses, institutions, and industrial establishments, together with such ground, surface, and storm water that may be present.

"Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage and industrial wastes.

"Sewer" shall mean a pipe or conduit for carrying sewage.

"Sewage Works" shall mean all municipal facilities for collecting, conveying, pumping, treating, and disposing of sewage and industrial wastes.

"Shall" is mandatory; "May" is permissive.

“Slug” shall mean any discharge of water, sewage, or industrial waste in which concentration of any given constituent or in quantity of flow exceed for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

"Standard Methods" shall mean the latest edition of the publication, “Standard Methods for the Examination of Water and Wastewater”, published by A.P.H.A., A.W.W.A., and W.P.C.F.

"State Plumbing Code" shall mean the State of Maine Plumbing Code, as amended, from time to time.

"Storm Sewer" or "Storm Ditch" shall mean a pipe or conduit which carries storm and surface waters and drainage but excludes sewage and industrial wastes.

"Superintendent" shall mean the individual retained or designated by the Manager or City Council to supervise and oversee the operation and maintenance of the municipal sewer system and treatment facilities.

"Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering in accordance with "Standard methods".

"Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

ARTICLE II - USE OF PUBLIC SEWERS REQUIRED

Section 201 - It shall be unlawful to discharge to any watercourse, either directly or through any storm sewer within the City or to any area under the jurisdiction of the City, any sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with federal, state, and local laws.

Section 202 - Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, leaching pit, or other facility intended or used for the disposal of sewage.

Section 203 - The owner of any residential building or property situated within the City and abutting on any

street, alley, or right-of-way, in which there is now located, or may be in the future located, a public sanitary sewer of the City is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities to the proper public sewer in accordance with the provisions of this local law, within ninety (90) days after the date of official notice to do so; provided that said public sewer is located within two hundred (200) feet of the building or property to be served by said sewer and the facility can be served by gravity flow. However, where excavation of the public highway is otherwise prohibited by state law or regulation, or where the building or property to be served has public road frontage and is more than two hundred (200) feet from the sewer, the City Council may grant exceptions upon specific application of the owner or lessee of such properties, with such conditions as the said City Council may impose.

Section 204 – The owner of any non-residential or sub-division property situated within the City and abutting on any street, alley, or right-of-way, in which there is now located, or may be in the future located, a public sanitary sewer of the City is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities to the proper public sewer in accordance with the provisions of this local law, within ninety (90) days after the date of official notice to do so; provided that said public sewer is located within five hundred (500) feet of any subdivision or remaining land of owner or facility to be served by said sewer. However, where excavation of the public highway is otherwise prohibited by state law or regulation, or where the structure to be served has public road frontage and is more than five hundred (500) feet from the sewer, the City Council may grant exceptions upon specific application of the owner or lessee of such properties, with such conditions as the said City Council may impose.

ARTICLE III - PRIVATE SEWAGE DISPOSAL

Section 301 - Where a public sewer is not available under those provisions of Section 203, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article and the State Plumbing Code.

Section 302 - Construction of private sewage disposal systems shall comply in all respects with requirements of the State Plumbing Code. In addition, a written notice shall be filed with the Code Enforcement Officer on a form furnished by the City, giving notice and details of said installation.

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

Section 304 - The building owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

Section 305 - At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 203, connection shall be made to the public sewer in compliance with this ordinance, and any septic tanks, cesspools, or similar private sewage disposal facilities shall be abandoned and filled with suitable material.

Section 306 - No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

ARTICLE IV - BUILDING SEWERS AND CONNECTIONS

Section 401 - No person shall uncover, use, alter, or disturb any public sewer or appurtenance thereof, without first obtaining a written permit from the Superintendent.

Section 402 –

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

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

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

C. If a commercial, industrial, or other non-residential use is expanded or in any way enlarged, causing the design flow to increase, the owner or agent shall be charged a fee based on increased design flow only. If a commercial, industrial, or non-residential user relocates to another location within the public sewer area, the connection fee must be based on the design flow as stipulated in Section 402 A. The Wastewater Superintendent may allow for a reduction in design flow by deducting the average flow of the most current business within the building being redeveloped from the design flow. If the design flow of the relocating business is less than the average flow of the business it is relocating to, no fee will be assessed.

Section 403 - A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, in which case the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

Section 404 - Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all the requirements of this ordinance.

Section 405 - The building sewer shall be schedule 35 or higher plastic pipe, or other suitable material approved by the Superintendent. The quality and weight of materials shall conform to the specifications of the State Plumbing Code. All joints shall be tight and waterproof. Where the building sewer is exposed to damage by tree roots or is installed in filled or unstable ground, the Superintendent shall have the authority to stipulate such special pipe materials or installation provisions as he deems necessary for the circumstances.

Section 406 - The size and slope of the building sewer shall be subject to the approval of the Superintendent, but in no event shall the diameter be less than four (4) inches. The slope of the building sewer pipe shall not be less than one-eighth (1/8) inch per foot.

The sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with man-holes or pipe fittings as approved by the Superintendent. A cleanout shall be located a minimum of four inches above the basement floor also, cleanout shall be provided at bends greater than 45 degrees or at 100 foot maximum intervals.

Section 407 - Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three (3) feet of any bearing wall which

might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with approved pipe and fittings.

Section 408 - In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer.

Section 409 - The type of pipe and installation of joints and connections of building sewers shall be in conformance with the State Plumbing Code in all respects. Other jointing materials and methods may be used only upon written approval of the Superintendent.

Section 410 - The connection of the building sewer into the public sewer shall be made with the wye branch or its equivalent. When connecting a four (4) inch diameter building sewer to any public sewer eight (8) inches in diameter or less, or when connecting a six (6) inch diameter building sewer to any public sewer twelve (12) inches in diameter or less, a wye branch must be installed in a location specified by the Superintendent. Where the public sewer has a greater than the maximum diameter for installation of a wye branch as specified above or no properly located wye branch is available, a neat hole may be cut into the upper quadrant of the public sewer to receive the building sewer with entry to be made in the downstream direction at an angle of approximately forty-five (45) degrees, again in a location specified by the Superintendent. A properly sized wye saddle shall be inserted into the hole so as not to extend past the inner surface of the public sewer. A smooth, neat joint shall be made and the connection made secure and watertight by encasement in concrete or as otherwise approved. Special fittings may be used for the connection only when approved by the Superintendent.

Section 411 - The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. No public sewer shall be disturbed except under the supervision of the Superintendent.

Section 412 - All excavation work for building sewer installations shall meet the following conditions:

A. The traveling public shall be adequately protected.

1. At least one-way traffic shall be maintained at all times.

2. Work shall be signed, barricaded, lighted, and traffic officers will be supplied when necessary.

B. Construction methods shall be such that excessive size of excavation and excessive destruction of pavement will be avoided. Bituminous concrete pavements shall be cut in advance along the proposed edges of the excavation. Trenches showing a tendency to collapse shall be supported by substantially placed sheeting.

C. Special backfill of suitable material may be used in the trench, immediately around the pipe. Otherwise, all material used for backfill shall be the same as or equivalent to that removed from each layer of excavation. Where the nature of the highway base material is not readily determined, backfill shall be clean gravel. The top eighteen (18) inches of any trench through paving shall be clean gravel. (At its option, in the interest of good public relations, the contractor or owner may place a temporary cold mix bituminous pavement.)

D. Backfill material shall be uniformly distributed in layers of not more than eight (8) inches and thoroughly compacted by use of approved mechanical compactors before successive layers are placed. Water shall be added when necessary to increase the moisture content of the backfill material in order to obtain adequate compaction. Puddling or jetting of backfill will not be allowed. Backfill materials shall be free from large clods of earth, free from stones and rock fragments over 50 lbs., and free from frozen materials.

E. Surplus material shall be removed from the site and the area shall be left in a clean, presentable condition.

F. Permanent pavement shall be replaced at the owner or developer's expense.

G. The City reserves the right, after due notice in writing to the Contractor or Owner:

1. To provide such supervision and inspection as it may deem necessary, at Owners or Contractor's expense

2. To properly excavate and backfill areas as necessary at Owners or Contractor's expense
3. To clean up areas of private property not properly cleaned by Owner or Contractor, at Owner's or Contractors expense.

H. Sidewalks, parks, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Street Commissioner.

Section 413 - Any building sewer serving a school, hospital, or similar institution or public building, or serving a complex of commercial or industrial buildings, or which, in the opinion of the Superintendent, will receive sewage or industrial wastes of such volume or character that frequent maintenance of said building sewer is anticipated, then such building sewer shall be connected to the public sewer through a manhole. If required, a new manhole shall be installed in the public sewer and the location of this manhole and the building sewer connection to it or to an existing manhole shall be as specified by the Superintendent.

Section 414 - All costs and expense incident to the installation, connection, and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

Section 415 - Where permitted by the plumbing codes or other appropriate laws or regulations of the State of Maine, other types of material and construction methods may be used notwithstanding any provisions of this ordinance to the contrary.

Section 416 - No person shall dismantle or move any building having a building service entrance into a public sewer without first having sealed the area of the entrance of the service into such building with a masonry plug. If upon examination by the Superintendent, the sewer service is found to be unserviceable, the owner shall remove such service and seal it at the public sewer.

Section 417 – No person shall connect to an existing sewer line unless the existing sewer line discharges into the public sewer. Furthermore, all lines tying into the existing line shall also be identified as approved connections to the public sewer system.

Section 418 – Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the City at least 45 days prior to the change or connection.

ARTICLE V - SEWER EXTENSIONS

Section 501 – For gravity sewer extensions requested by individual homeowners, the City will not participate in the financing of the sewer extensions.

Section 502 - For those sewer extensions which are to serve subdivisions on new streets, the City will not participate in the financing of the sewer extensions.

Section 503 – Any developer incurring the cost of an approved sewer extension may recoup up to seventy five percent (75%) of the cost of the construction of such extension through future customer rebates. Future customers, with the exception of individual homeowners, that connect to the new main within ten (10) years of initial construction shall be required to pay a per foot cost based on the location of the connection on the new extension. The per foot cost shall be determined by dividing the 75% cost by the length in linear feet of the extension. The total infrastructure expansion fee shall be the per foot cost multiplied by the number of feet from the beginning of the extension to the point of the new connection. If there are multiple connections within the ten year period, a customer that connects in a location further along the extension may subtract the infrastructure expansion fee the customer before them has previously paid. As such, any customer that connects in a location below an existing customer must reimburse that customer directly above, their portion of the infrastructure expansion fee previously paid. (See Appendix A for examples)

The infrastructure extension fee is in addition to the sewer connection fee and is payable to the City of Ellsworth for connection to the public sewer system.

Section 504 - All extensions to the sanitary sewer system shall be designed in accordance with the Recommended Standards for Sewage Works, as adopted by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers. Plans and specifications for sewer extensions shall be submitted to and approval obtained from the Superintendent before construction may proceed. The design of sewers must anticipate and allow for flows from all anticipated future extensions or developments within the surrounding area for the foreseeable future.

Section 505 - Sewer design shall be in accordance with the following provisions: Pipe material shall be schedule 35 or higher plastic pipe meeting the A.S.T.M. standards. No standard strength clay pipe or non-reinforced concrete pipe shall be used. Minimum internal pipe diameter shall be eight (8) inches. Joints for each kind of pipe shall be designed and manufactured such that "O" ring gaskets of the "snap-on" type are employed. Gaskets shall be continuous, solid and natural or synthetic rubber and shall provide a positive compression seal in the assembled joint such that the requirements of Section 505 are met. Joint preparation and assembly shall be in accordance with the manufacturer's recommendations. Wye branch fittings shall be installed for connection to building sewers in accordance with section 411. Trench widths as measured just above the crown of the pipe shall not exceed the internal diameter of the pipe plus three (3) feet. Pipe shall be firmly and evenly bedded on a minimum of six (6) inches of screened gravel or bank run sandy gravel with stone size not exceeding one (1) inch. Pipe thickness and field strength shall be calculated on the following criteria:

Safety Factor 1.9

Load Factor 1.7

Weight of Soil 120 lbs. /cu. ft.

Wheel Loading 16,000 lbs.

Utilizing the above information, design shall then be made as outlined in Chapter IX of the Water Pollution Control Federation Manual of Practice No. 9, "Design and Construction of Sanitary and Storm Sewers".

Manholes shall be constructed at all changes in slope or alignment or at intervals of three hundred (300) linear feet. The manholes shall be constructed with a poured three thousand (3,000) psi concrete base eight (8) inches thick, steel troweled concrete or mortar bench walls and inverts and precast four (4) foot diameter concrete manhole barrel sections with tapered top sections, as specified by ASTM C-478. The manhole frame and cover shall be the standard design of the City and shall be set with no less than two (2) courses of brick underneath to allow for later adjustment in elevation. All joints shall be sealed against infiltration.

Section 506 - All Public sewers shall satisfy requirements of a final vacuum test before they will be approved and sewage flow accepted from them by the City. Testing methods shall be as follows:

A. General: Test all sanitary sewer pipes after backfill.

B. Gravity Sewer – Leakage Tests: Use low pressure air tests as follows:

1. Plug ends of section to be tested
2. Supply air slowly to the pipe to be tested until the air pressure inside the pipe is 6 psi.
3. Disconnect air supply and allow a minimum of 2 minutes for stabilization of pressure.
4. Following stabilization period measure drop in pressure over a 6-minute test period.
5. Acceptable drop; No more than 1.0 psi.

C. Repair all pipes not passing tests using materials and methods approved by the owner and retest.

MANHOLE VACUUM TESTING

A. The manhole being tested must not be backfilled. The test is passing if the manhole holds ten (10) inches of mercury vacuum for 3 minutes, with one (1) inch of mercury loss allowable.

REPAIRS

- A. Determine causes of all leaks and repair them. Perform earthwork required if manhole has been backfilled.
- B. Perform repairs using methods and materials approved by the owner. Remove and replace or reconstruct manhole if necessary. Remove and replace defective sections if required by the owner.

Section 507 - All extensions of public sewers constructed at the expense of the property owner, builder, or developer, after approval by the Superintendent, and acceptance by the City Council, shall become the property of the City and shall thereafter be maintained by the City. Sewers shall be guaranteed against defects in the materials or workmanship for eighteen (18) months, from the date of acceptance by the City. The guarantee shall be in a form approved by the City and may include a completion bond or certified check.

Section 508 - No builder or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities within the City of Ellsworth, unless a suitable and approved method of waste disposal is proposed.

ARTICLE VI - USE OF PUBLIC SEWERS

Section 601 - No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water, or unpolluted industrial process water, to any sanitary sewer.

Section 602 - Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm drains for such discharge or to a natural outlet approved in writing by the Manager or his designee. Industrial cooling water or unpolluted process waters may be discharged, upon written approval of the Manager or his designee, to a storm sewer or natural outlet, provided, however, that said discharge shall be in accordance with all State regulations.

Section 603 - Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- A. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit.
- B. Any water or waste which may contain more than twenty five (25) milligrams per liter of fat, oil, or grease, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit.
- C. Any gasoline, benzene, naphtha, fuel oil, lubricating oils, or other flammable or explosive liquids, solids or gases.
- D. Any garbage that has not been properly shredded.
- E. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.
- F. Any waters or wastes having a pH lower than 6.5 or higher than 8.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
- G. Any waters or wastes containing suspended solids or biochemical oxygen demand (BOD) of such character and quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant.
- H. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
- I. Any noxious or malodorous gas or substance capable of creating a public nuisance.

Section 604 – Grease interceptors shall be required in the following establishments where food is prepared or dispensed including but not limited to: restaurants, cafes, lunch counters, cafeterias, bars and clubs, hotels, bed and breakfasts, hospitals, sanitariums, factories, school kitchens, commercial kitchens, and nursing homes. The

Superintendent may authorize an annual waiver if it is determined that an establishment generates wastewater or other waste entering the public sewer which contains less than 25 parts per million, by weight of fat, oil, or grease. In reaching this determination, the Wastewater Superintendent may require a test. Testing fees, if necessary, shall be paid by the applicant.

A grease interceptor is not required for individual dwelling units or for any private living quarters. Establishments which are not on the public sewer system are exempt from the requirements of this ordinance.

All grease interceptors shall be of a design conforming to Plumbing and Drainage Institute Standards PDI-G101, December, 1985 Edition. Sand and oil interceptors, when in the opinion of the Superintendent are necessary, shall conform to the same standards as grease interceptors. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, water-tight and equipped with easily removable covers which when bolted in place shall be gas tight and water tight.

Installation and maintenance of any interceptor shall comply with the Plumbing and Drainage Institute Standards PDI-G101, except that accumulated grease shall be removed at a minimum of once every four (4) weeks or more often if needed. Owners of properties in which grease interceptors are installed shall, on forms available at the Ellsworth Wastewater Treatment Plant, maintain record of the dates and times that such interceptors are cleaned.

Section 605 – Oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. Sand and Oil interceptor design shall conform to the most current edition of the Plumbing and Drainage Institute Standards PDI-G101.

Where installed, all grease, oil, and sand interceptors or traps shall be maintained by the owner, at his expense, in continuously efficient operation at all times. The owner or tenant of the premises shall grant to the City permission to conduct unannounced inspections of any such interceptor during normal business hours. Such inspections shall not unreasonably interfere with normal operations of the business.

Section 606 - The admission into the public sewers of any waters or wastes having (a) a 5-day B.O.D. greater than three hundred (300) milligrams per liter; or (b) containing more than three hundred fifty (350) parts per million by weight of suspended solids; or (c) containing any quantity of substance having the characteristics described in Section 603; or (d) having an average daily flow greater than two (2%) percent of the average daily flow of the City shall be subject to the review and approval of the Superintendent. Where necessary, in the opinion of the Superintendent, the owner shall provide at his expense, such preliminary treatment as may be necessary to (a) reduce the Biochemical Oxygen Demand to three hundred (300) milligrams per liter; or (b) reduce suspended solids to three hundred fifty (350) milligrams per liter; or (c) reduce objectionable characteristics to within the maximum limits provided for in Section 603; or (d) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and the Department of Environmental Protection of the State of Maine. No construction of such facilities shall be commenced until said approvals are obtained in writing.

Section 607 - Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

Section 608 - When required by the Superintendent, the owner of industrial or commercial property, served by a building sewer carrying industrial wastes shall install a suitable control structure in the building sewer to facilitate observation, sampling, and measurements of wastes. Such structure, shall be accessible, safely located, and shall be constructed in accordance with plans approved by the Superintendent. The structure and all necessary measuring and sampling equipment shall be installed by the owner at his expense, and controlled and

maintained by the owner, but shall be open to inspection by the Superintendent.

Section 609 - All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in Sections 603 and 606 shall be determined in accordance with "Standard Methods for the Examination of Water and Sewage", and shall be determined at the control manhole provided for in Section 608, or upon suitable samples taken at said controls structure. Records of the measuring and sampling shall be those prescribed by the Superintendent and shall be available to the Superintendent for his inspection.

Section 610 - For industrial wastes of unusual volume, strength of character, special agreements, as determined by the City in accordance with Federal and State regulations, shall be required between the City and the industry concerned providing for the acceptance of such wastes in the municipal system.

Section 611 – Pretreatment Standards - All users of the Public Sewer System will comply with all standards and requirements of the Clean Water Act, including The National Pretreatment Standards and the National Categorical Standards. The National Categorical Standards located 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated into this ordinance.

Section 612 – Dilution – Except where expressly authorized to do so by an applicable Pretreatment Standard, no user shall ever increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard.

ARTICLE VII - PROTECTION FROM DAMAGE

Section 701 - No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the municipal sewage works. Violators shall be subject to criminal charges.

Section 702 - A contractor must present a certificate showing proof of liability insurance before a permit will be issued for construction of building sewers, sewer extensions, or private sewage disposal.

Section 703 – General Prohibitions – no user shall contribute or cause to be contributed, in any manner or fashion, directly or indirectly, any pollutant or wastewater which is determined by the Ellsworth Wastewater Department to be detrimental to the operation or performance of the Ellsworth Wastewater Facility.

Without limiting the generality of the foregoing, a user may only contribute the following substances with written authorization from the Ellsworth Wastewater Department, however, at no time shall the prohibitions of 40 CFR 403.5 (a) & (b) or Categorical standards or Section 603 limits be violated:

1. Any solids, liquids, or gases which, by reason of their nature or quantity, are or may be sufficient at point of discharge, either alone or by interaction with other substances, to cause a fire or an explosion or be injurious, in any way, to the District, or to the operation of the District. The closed cup flash point of the waste being discharged to the District not, per 40 CFR 403.5 (b) (1), be less than 60 degrees C using the approved laboratory procedure, at the end of pipe.

2. Any solid or viscous substances in amounts which may cause obstruction to the flow in the sewer collection system resulting in interference or cause a nuisance with the operation of the wastewater treatment facilities. Unless explicitly allowable by a written permit, such substances include, but are not limited to, grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing fuel or lubricating oil, mud, or glass grinding or polishing wastes.

3. Any wastewater having a ph less than 5.5 or greater than 9.5, except at the discretion of the Ellsworth Wastewater Department, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or City personnel. In no case shall the ph be less than 5.0 or greater than or equal to 12.5 at end of pipe as per 40CFR 403.5 (b) (2).

4. Oils and grease – Any commercial, institutional, or industrial wastes containing floatable fats, waxes,

grease, or oils, or which become floatable when the wastes cool to the temperature prevailing in the wastewater at the Wastewater Treatment Plant, during the winter season; also any commercial, institutional, or industrial wastes containing more than 100 mg/l of oil or grease; also any substances which will cause the sewage to become substantially more viscous, at any seasonal sewage temperature in the District. At no time shall there be a discharge of petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through as per 40 CFR 403.5 (b) (6).

5. At no time shall there be a discharge of any substance which will cause interference or pass through as per 40 CFR 403.5 (a) (1).

6. Any wastewater with objectionable color which is not removed in the treatment process. At no time shall a discharge impart color to the receiving waters which causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.

7. Any solid, liquid, vapor, or gas having a temperature higher than 65 degrees C (150 degrees f); however, such materials shall not cause the wastewater treatment plant influent temperature to be greater than 40 degrees C (104 degrees F). The City reserves the right to prohibit wastes at temperatures lower than 65 degrees C.

8. Unusual flow rate or concentration of wastes, constituting slugs, except by Industrial Wastewater Permit, but in no case any discharge of a flow rate or concentration which will cause pass through or interference as per 40 CFR 403.5 (a) (1).

9. Any wastewater containing any radioactive wastes except as approved by the District, and in compliance with applicable State and Federal regulations.

10. Any wastewater which causes a hazard to human life or which creates a public nuisance, either by itself or in combination, in any way, with other wastes.

Section 704 – Concentration Based Limitations – No person shall discharge, directly or indirectly, into the sewer, wastewater containing any of the following substances in concentrations exceeding those specified below on a daily basis, except by permit. Concentration limits are applicable to wastewater effluents at the point just prior to discharge into the Ellsworth Collection System (“end of pipe” concentration).

EFFLUENT LIMITS

SUBSTANCE	ALLOW. AVG DAILY	ALLOW. MASS LIMITS
Cadmium	0.45 mg/l	0.008 lbs/day
Chromium (tot)	4.99 mg/l	0.106 lbs/day
Copper	7.47 mg/l	0.108 lbs/day
Lead	3.33 mg/l	0.062 lbs/day
Mercury	0.03 mg/l	0.0004 lbs/day
Nickel	15.53 mg/l	0.278 lbs/day
Zinc	2.70 mg/l	0.600 lbs/day

(1) All concentrations listed for metallic substances shall be as “total metal”, which shall be defined as the value measured in a sample acidified to a ph value of 2 or less, without prior filtration.

(2) As determined on a composite sample, unless otherwise stated in writing, taken from the User’s daily discharge over a typical operational and/or production day.

ARTICLE VIII - POWERS AND AUTHORITY OF INSPECTORS

In emergency situations or with reasonable cause, the Superintendent and other duly authorized employees of the City bearing proper credentials and identifications shall be permitted to enter upon all properties for the purpose of inspection, observation, and measurement sampling and testing in accordance with the provisions of this ordinance.

ARTICLE IX - PENALTIES

Section 901 - Any person violating any provision of this ordinance except Section 701 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in said notice, permanently cease all violations.

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

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

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

ARTICLE X - SEWER SERVICE CHARGE

Section 1001 – The City shall impose a Sewer Service Charge upon owners of property whose residence or place of business is connected to the City of Ellsworth public sewer system.

Section 1002 - Sewer Service Charge rates shall be determined by the City Council annually and in general, such charges will be determined on a rate structure based on water consumption. All users not served by the water utility shall be charged on volume as determined by a meter installed and maintained by the owner, but open to inspection by the Superintendent. Said meter shall be of the type and design approved by the City. The sewer service charge shall be computed and billed at quarterly intervals throughout the calendar year and shall be due and payable as of the date of the bill.

Section 1003 - A Special Sewer Service Charge shall be assigned any user whose waste varies significantly in strength or otherwise from that of normal domestic sewage. In general, a Special Sewer Charge will be based on equitable prorating of costs for conveying and treating such waste, taking into account, but not necessarily limited to, the effect of volume, B.O.D., suspended solids, settleable solids, chlorine demand, toxicity, and pH. Pretreatment by the industry may also be a requirement if necessary to make the waste compatible with flow in the sewer system. The City Council, shall assign a Special Sewer Service Charge to the user. The applicable portions of the preceding sections as well as the equitable rights of the public shall be the basis for such an arrangement.

Section 1004 - **INDUSTRIAL & NON-DOMESTIC COST RECOVERY** - In addition to the Special Sewer Service Charge, there shall be an additional charge to non-governmental users of the Public Sewage Work identified in the Standard Industrial Classification Manual, 1972, prepared by the Federal Government Office of Management and Budget, as amended and supplemented, under the following divisions:

Division A - Agriculture, Forestry and Fishing

Division B - Mining

Division D - Manufacturing

Division E - Transportation, Communications, Electric, Gas and Sanitary Services

Division I - Services

A user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences. Any facility whose nature is within one or more of the above Divisions, which is connected to the Public Sewage Works, and which is discharging or is connected with the intent of discharging to the Public Works significant quantities of process, industrial or other wastes not of a domestic or sanitary nature, shall be subject to the special charge to be established by separate agreement between said user and the City for the purpose of recovering that portions of Federal Grants expended in aid of the construction of Public Sewage Works, under programs administered by the United States Environmental Protection Agency, allocable to the treatment of wastes from such users in accordance with the following provisions:

- A. Each year during the cost recovery period, each user of the treatment works shall pay its share of the total grant amount divided by the recovery period.
- B. The cost recovery period shall be equal to thirty (30) years or the useful life of the treatment works, whichever is less.
- C. Payments shall be made no less often than annually. The First payment by an industrial user shall be made no later than one year after use of the treatment works begins.
- D. A user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant amount allocable to industrial use to all industrial users of the treatment works. At a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.
- E. If there is a substantial change in the strength, volume or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly.
- F. If there is an expansion or upgrading of the treatment works, each existing industrial user's share will be adjusted accordingly.
- G. An industrial user's share shall not include any portion of the grant amount allocable to unused or unreserved capacity.
- H. An industrial user's share shall include any firm commitment to the grantee of increased used by such user.
- I. An industrial user's share shall not include an interest component.

Section 1005 - The City Council reserves the right from time to time to change Sewer Service Charges originally or previously assigned to any property owner.

Section 1006 - All property owners outside the city limits, who, by their own request are served by sanitary sewers, must pay a Sewer Service Charge established by the City Council.

Section 1007 - Each sewer charge, together with accrued interest, levied pursuant to this ordinance, is hereby made a lien on the real estate served or benefited by the sewer; and if not paid within ninety (90) days of the due date, may be collected by the City Treasurer pursuant to the provisions of Title 38, Section 1208, M.R.S.A., and Title 30, Section 4355 M.R.S.A. as amended.

Section 1008 – ABATEMENTS – Abatements for use of water for lawn sprinklers, garden hoses, or other uses of significant volumes of water, which do not enter the public sewer, or water loss from a catastrophic event may be made on application to the City. Commercial/non-residential accounts are not eligible for an abatement. Consumer is only eligible every four (4) billing cycles and must have previous four (4) billing cycles to apply for an abatement. Consumer may not have an abated bill within those previous four (4) billing cycles of the abatement period and must apply for an abatement within ninety (90) days of the billing date. To qualify as a catastrophic event the consumption must be 150% greater than the average of the previous four (4) billing

cycles. The adjusted billing determined shall not be less than the highest billing or adjusted billing during the previous three billing cycles. The City may abate for residential swimming pools that have registered the volume of the pool with the City. There must be corresponding water usage on the bill for the volume of the pool. The pool abatement will only be granted once per year. The City Manager or his/her designee shall approve or deny abatements.

Section 1009 - INTEREST ON UNPAID BILLS - There shall be charged, in addition to the rates herein established, interest at the annual rate of eighteen (18%) percent on all sewer use fees which are not paid on the due date shown on the bill except that such interest so charged shall be excused unless notice of lien claim for non-payment of sewer use fees is mailed in accordance with these regulations.

Section 1010 – CAPITAL CHARGE – The City shall impose a capital sewer charge to offset capital costs involved in maintaining and improving the collection system and treatment facility. The capital sewer charge rates shall be determined by the City Council on a year to year basis, and in general, such charges will be determined on a rate structure based on metered consumption.

ARTICLE XI. SPECIAL EXCEPTION.

Upon recommendation of the Wastewater Superintendent, the City Council may grant a Special Exception modifying the requirements of this ordinance. The Wastewater Superintendent's recommendation must include: 1) a description of the special circumstances justifying the Special Exception; 2) the proposed modification to ordinance standards; 3) a statement that the granting of the Special Exception would not have the effect of nullifying the intent and purpose of the ordinance or other City ordinances; and 4) a list of any conditions deemed appropriate to protect public health, safety, and welfare given the proposed Special Exception. The Council may grant the Special Exception if the Council finds that special circumstances so warrant and provided that the exception would not result in a material adverse impact to public health, safety, or welfare. The Council may condition the grant of a Special Exception upon the execution of a contract with the party requesting the exception that includes indemnification to the City.

ARTICLE XII INFLOW REMOVAL PROGRAM

In order to reduce unapproved inflow to the sewer collection system, the City of Ellsworth will charge a \$50 quarterly inflow surcharge against those contributing said inflows. This surcharge will be assessed for each incidence of unapproved connections to the sewer. This charge will be eliminated upon removal of the unapproved or illegal connection to the sewer service and a proven and viable method for ground water and surface water removal has been installed to the Wastewater Departments specifications. Illegal inflows include but are not limited to sump pumps, foundation drains, and basement drains.

This fee will commence 180 days after approval by the City Council. This surcharge will be applied to all users; exemptions will be given if no illegal connection is found or if an illegal connection is satisfactorily removed per the above specifications. Sewer users should contact City Hall to schedule an appointment for inspection to determine exemption eligibility.

ARTICLE XIII - VALIDITY OF ORDINANCE

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

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

ARTICLE XIV - ORDINANCE IN FORCE

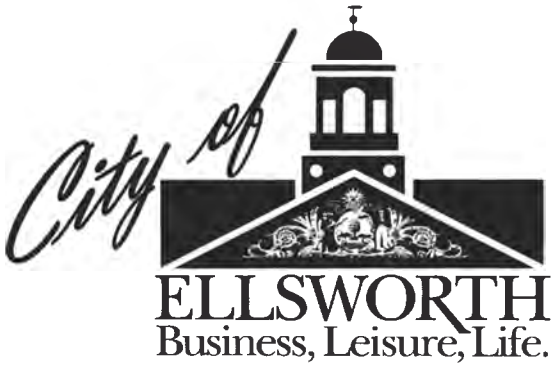
This ordinance shall be in full force and effect from and after its passage, approval, and recording, except Section 204 is not applicable to any project, development or subdivision that has received final Planning Board approval or other local review approval or other local review approval prior to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

City of Ellsworth Ordinances

Chapter 6

**Sanitation of Public
Eating and Drinking
Places**

This ordinance was repealed.



**City of Ellsworth
Chapter 7**

TRAFFIC CODE

A true copy –

Attest: Heidi-Noel Grindle

City Clerk



Amended 11/17/1980

Amended 11/19/1990

Amended 05/20/1991

Amended 05/20/1996

Amended 07/15/1996

Amended 04/21/1997

Amended 02/28/2000

Amended 03/20/2000

Amended 07/19/2004

Amended 09/21/2009

Amended 07/18/2011

Amended 02/09/2015 Effective 04/01/2015

ARTICLE 1. DEFINITIONS

Section 101. **Words and Phrases Defined.** The following words and phrases, when used in this ordinance, shall, for the purpose of this ordinance, have the meanings respectively ascribed to them in this article.

101.1. **Alley.** A narrow way between buildings or giving access to the rear of buildings.

101.2. **Authorized Emergency Vehicle.** Vehicles of the Fire Department, Police Department, ambulances, and any other emergency vehicles.

101.3 **Crosswalk.** That part of a roadway at an intersection included within the connections of lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway; or, any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface,

101.4. **Curb.** The outer edge of a defined sidewalk, or either edge of the wrought and usually traveled part of a street.

101.5. **Driver.** Every person who drives or is in any manner in control of a vehicle.

101.6. **Intersection.** The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadway of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angles may come in conflict.

101.7 **Individual Parking Space.** A portion of the paved surface of the street of sufficient length and depth from the sidewalk curb to accommodate a vehicle to be parked as shall be specified and marked off by the City Manager or an agent designated by him.

101.8 **Official Traffic Signs.** All signs, signals, markings and devices placed or erected by officials having jurisdiction for the purpose of regulating, warning or guiding traffic.

101.9 **Parking Meters.** A device or devices which shall indicate thereon the length of time during which a vehicle may be parked in a particular place, which shall have as a part thereof a receptacle or chamber for receiving and storing coins of United States money, a slot or place in which said coin or coins may be deposited, a timing mechanism to indicate the passage of the interval of time during which parking is

permissible and which shall also display an appropriate signal when the aforesaid interval of time shall have elapsed; also brief instructions as to its operation.

101.10. **Pedestrian.** Any person afoot.

101.11. **Police Officer.** Every sworn officer of the municipal police department or any officer authorized to direct or regulate traffic or to make arrests for violations of the law or ordinances.

101.12. **Right-of-Way.** The privilege of immediate use of the roadway.

101.13. **Sidewalk.** That portion of a street, between the curb or ditch line and the adjacent property lines, intended for the use of pedestrians.

101.14. **Stop.** When required, means complete cessation of movement.

101.15. **Stop, Stopping, or Standing.** When prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic-control sign or signal.

101.16. **Through Street.** Every street or portion thereof at the entrance to which vehicular traffic from intersecting streets or highways is required to stop before entering or crossing the same and when stop signs are erected as provided in this ordinance.

101.17. **Traffic.** Pedestrians, ridden or herded animals, vehicles and other conveyances whether singly or together, while using any street for purposes of travel.

101.18. **Traffic-Control Devices.** All signs, signals, markings and devices, whether immovable or whether manually, electrically or mechanically operated, placed or erected by authority of the City Council or City Manager by which traffic is alternately directed to stop and to proceed or for the purpose of regulating, warning or guiding traffic.

101.19. **Vehicle.** Any device in, upon or by which any person or property is or may be transported or drawn upon a highway, except those operated by human power, or upon rails or tracks.

ARTICLE 2. POLICE AUTHORITY

Section 201. **Authority of Police Officers.** Officers of the Police Department, or such officers as are assigned by the Chief of Police, are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that in the event of a fire or other emergency, or to expedite traffic or to safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this ordinance.

201.1 **Emergency Rule by Police Officer.** Whenever a police officer shall deem it advisable, during the time of a fire or at the time of any accident, special emergency or for the public safety and convenience, he may temporarily close any way or part thereof to vehicular traffic, or to vehicles of a certain description, or to divert traffic thereof, or to divert or break a course of pedestrian traffic.

Section 202. **Compliance.** No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

Section 203. **Exemptions to Authorized Emergency Vehicles.** The provisions of this ordinance regulating the operation, parking and standing of vehicles shall not apply to authorized emergency vehicles, as defined in Section 101, while the driver of any such vehicle is operating the same in the necessary performance of public duties providing said driver sounds a siren, bell or exhaust whistle as a warning to others. This exemption does not protect the driver of any such vehicle from the consequences of reckless disregard of the safety of others.

ARTICLE 3. TRAFFIC CONTROL DEVICES

Section 301. **Authority to Install.** The City Manager shall place and maintain or cause to be placed and maintained, traffic control signs, signals, and devices when and as required or authorized under this ordinance, and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under this ordinance or under State law, or to guide or warn traffic, including angle parking signs and markings, turning markers and signs prohibiting left, right or U turns, the location of which he is authorized to determine.

Section 302. **Obedience to Official Traffic Control Devices.** The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with this ordinance, unless otherwise directed by a police officer, subject to the exceptions granted to the driver of an authorized emergency vehicle in this ordinance.

Section 303. **Designation of Crosswalks and Traffic Lanes.** The City Manager is hereby authorized:

303.1 **Crosswalks.** To designate and maintain by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where, in his opinion, there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary.

303.2 **Lanes.** To make lanes for parking and for traffic on street pavements at such places as he may deem advisable consistent with this ordinance.

Section 304. **Stop Signs.**

304.1 **Authority to Erect.** Whenever this ordinance designates and describes a through street, it shall be the duty of the City Manager to place and maintain, or cause to be placed and maintained, a stop sign on each and every street intersection such through street. Every such sign shall bear the word "Stop" in letters not less than six inches in height, and shall be located as near as practicable at the nearest line of crosswalk on the near side of the intersection or, if none, at the nearest line of the roadway.

304.2 **Stop Required.** When stop signs are erected as herein provided at or near the entrance to any intersection, every driver of a vehicle shall stop such vehicle at such sign or at a clearly marked stop line before entering the intersection except when directed to proceed by a police officer or traffic control signals.

304.3 **Entering Through Street.** After the driver of a vehicle has stopped in obedience to a stop sign at the entrance to a through street, such driver shall then proceed cautiously, yielding the right-of-way to vehicles which have entered the intersection from said through street or which are approaching so closely on such through street as to constitute an immediate hazard, but may then proceed.

305. **Interference.** No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device, or any inscription, shield or insignia thereon, or any part thereof.

ARTICLE 4. PARKING REGULATED

Section 401. **CITY MANAGER'S POWER TO REGULATE PARKING.**

The City Manager and Chief of Police are hereby authorized and directed to designate and mark off or cause to be marked off, such individual parking spaces as either deems proper along any street in the business or industrial areas of the City for the parking of vehicles. Where individual parking is so marked off, each vehicle shall be parked entirely within an individual parking space.

The City Manager and Chief of Police are hereby authorized to determine and designate by proper signs, places not exceeding 100 feet in length in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic. When official signs are erected, no person shall stop, stand or park a vehicle in any such designated place.

The City Manager and Chief of Police are hereby authorized to cause temporary or permanent signs to be erected indicating no parking adjacent to any school property when such parking would, in either's opinion, interfere with traffic or create a hazardous situation. When official signs are erected indicating no parking adjacent to any school property, no person shall park a vehicle in any such designated place.

The City Manager and Chief of Police are hereby authorized to designate specific areas or streets as prohibited parking areas and shall mark or cause to be marked such areas.

The Municipal Officers have the exclusive authority to enact all traffic and parking ordinances in the municipality in accordance with Title 30-A M.R.S.A. Section 3009.

Section 402. **ENFORCEMENT.** It shall be the duty of the police officers of the City of Ellsworth, acting in accordance with instructions by the City Manager and Chief of Police, to report:

402.1 The state license number of any vehicle that is or has been parking in violation of any provisions of this ordinance.

402.2 The time at which such vehicle is parking in violation of any provision of this ordinance.

402.3 Any other facts, a knowledge of which is necessary to a thorough understanding of the circumstances attending such violation.

402.4 Each officer shall attach to such vehicle a notice to the owner or operator thereof that such vehicle has been parked in violation of the provisions of this ordinance.

SECTION 403. **EVIDENCE.** The fact that any vehicle is illegally parked is

prima facie evidence that the vehicle has been parked illegally by the person in whose name the vehicle is registered. (30-A M. R. S. A. Sec. 3009 (C))

SECTION 404. **HOLIDAYS DEFINED.** The term "holidays" as used in this ordinance shall mean all State of Maine legal holidays and holidays accepted by the City Council.

SECTION 405¹. **PARKING ON CERTAIN STREETS LIMITED.**

405.01 No person shall park, stand, or leave a motor vehicle for more than the prescribed time period, between eight a.m. and five p.m., Monday through Saturday, except recognized State of Maine holidays, at the locations specified.

405.02 Any vehicle that remains in a parking space longer than the time prescribed for parking in Section 405 of this chapter is hereby determined to be illegally parked.

405.03 Each time period during which a vehicle is parked in violation of the timed parking shall be construed to be a separate violation.

405.10 **Two Hour Parking**²

405.11 Main Street – South side from State Street east to a point that measures 495 feet west of High Street. North side from Main Street to School Street.

405.12 Franklin Street – either side from Pine Street to Store Street

405.13 ³State Street – West side from Main Street to the northeast corner of the Hancock County Courthouse; East side from Main Street to Church Street.

405.14 City Hall Parking Lot – Southerly row of parking spaces (fronting Store Street)

405.15 School Street Parking Lot – 10 parking spaces along the embankment (facing City Hall parking lot). ⁴

405.20 **20 Minute Parking**

405.21 Church Street City Hall Parking Lot – four designated parking spaces for city business only.

405.22 City Hall Parking Lot – four designated parking spaces on the north side between the front city hall steps and the Fire Station handicap entrance.

SECTION 406. Repealed

SECTION 407. **PROHIBITED PARKING AREAS.** No person shall park,

¹ Section 405 repealed & replaced 2/28/00

² Amended 07/19/2004

³ Section 405.13 repealed & replaced 3/20/00

⁴ Section 405.15 added 7/18/2011.

stand, or leave a motor vehicle in the following specified areas:

- 407.1 Either side of High Street from Main Street to Short Street.
- 407.2 South side of Main Street from High Street west over a distance of 495 feet. North side of Main Street from Oak Street to School Street.
- 407.3 Either side of Main Street and West Main Street from the intersection of Water, Main and State Streets to the south driveway of the Colonel Black Estate.
- 407.4 Either side of South Street from the intersection of Laurel Street to a point 490 feet from West Main Street.
- 407.5 East side of Oak Street from Main Street to State Street.
- 407.6 Either side of Fourth Street from Wood Street to Forest Avenue.
- 407.7 Either side of Court Street from Route #172 to the Christian Ridge Road.
- 407.8 South side of Church Street from State Street to Oak Street. North side of Church Street from School Street to Oak Street.
- 407.9 South side of Pine Street from High Street to Water Street; and north side of Pine Street from Water Street easterly 213 feet and High Street westerly to United Baptist Church parsonage, a distance of 690 feet.
- 407.10 East side of State Street from the south entrance of the Bryant E. Moore School to Oak Street.
- 407.11 Either side of Water Street from Card's Brook to Franklin Street.
- 407.12 Either side of Grant Street from West Main Street to Liberty Street.
- 407.13 West side of State Street from Church Street to Central Street. East side of State Street from a point 180 feet north of the Church Street intersection proceeding northerly over a distance of 288 feet (north edge of the lot at 77 State Street).
- 407.14 West side of Hancock Street from the intersection of Main and Hancock Streets to a point 149 feet south on Hancock Street.
- 407.15 No parking on Store Street, so called, a public way situated behind and on the northerly side of the stores on Main Street extending from the westerly side of Franklin Street west 206 feet. No parking on Store Street from the easterly side of Franklin Street and extending 100 feet east. Vehicles may be parked on Store Street in these locations for the purpose of loading and unloading material to or from the business having direct access to this street.

Vehicles which are parked on Store Street for the purpose of loading or unloading shall display a loading permit on the dashboard or visor. The loading permits are issued at the Police Department and are valid for 15 minutes.

407.16 South side of East Main Street from the intersection of High and Main Streets to the entrance of the St. Joseph's Church parking lot, a distance of 153 feet.

407.17 North side of Birch Avenue from Oak Street to School Street.

407.18 East side of Cross Street from Court Street to West Main Street.

407.19 Both sides of Outer State Street from Oak Street to Infant Street.

⁵407.20 Both sides of Garden Street from Birch Avenue to Park Street.

⁶407.21 Franklin Street both sides from Pine Street southerly to Water Street

407.22 Both sides of Red Bridge Road from Christian Ridge Road to Bangor Road. This article shall automatically repeal on January 1, 2012 unless earlier repealed.⁷

SECTION 408. STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or with the direction of a police officer or traffic control device, in any of the following places:

408.1 On a sidewalk;

408.2 In front of any driveway or lane;

408.3 Within an intersection;

408.4 Within eight feet of a fire hydrant;

408.5 On a crosswalk;

408.6 Within ten feet of an intersection;

408.7 Within 15 feet upon the approach to any stop sign located at the side of the roadway;

408.8 On the roadway side of any vehicle stopped or parked at the edge or curb of a street (double parking, so called)

408.9 Upon any bridge;

408.10 At any place where official signs or curb painting so prohibit. Any curb which is painted yellow shall be deemed to be a non parking area;

408.11 In fire lanes so designated by signs.

SECTION 409. OBSTRUCTING TRAFFIC. No person shall stop, stand, park or leave his vehicle on any street in such a manner or under such conditions so as to

⁵Added 5/20/96

⁶Added 04/21/97

⁷ Added 09/21/2009

obstruct the free passage of other vehicles in either direction unless specifically permitted by a police officer or so as to leave available less than 10 feet of the width of the roadway for free movement of vehicular traffic.

SECTION 410. PARKING IN ALLEYS. No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property.

SECTION 411. HANDICAPPED PARKING

411.1 The City manager or Chief of Police is hereby authorized to determine and designate by proper signs, certain parking spaces for handicapped parking.

411.2 Any vehicle or motorcycle parked in a parking space clearly marked as a handicapped parking space and which does not bear a special registration plate or placard issued under Title 29, Section 252, 252-A or 252-C, or a similar plate issued by another state, shall be cited for a forfeiture of not less than \$50.00. "Clearly marked" includes painted signs on pavement and vertical standing signs which are visible in existing weather conditions. Any police officer may cause any vehicle so parked to be removed from the parking space and placed in a suitable parking space at the expense of the owner of such vehicle, and without the City being liable for any damage that may be caused by such removal.

SECTION 412. BUS STOPS AND TAXICAB STANDS. The City Manager shall designate spaces as bus stops and taxicab stands on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public. The City Manager shall cause such spaces to be designated by appropriate signs or curb markings or both.

412.1 The driver of a bus or taxicab is hereby authorized to park the same in any such place without restriction as to time.

412.3 No person shall stop, stand or park a vehicle other than a bus or taxicab in any such space when the same has been officially designated and appropriately marked, except that the driver of any passenger car or light delivery vehicle may stop the same therein for the purpose of and while actually engaged in loading or unloading passengers or parcels and when such stopping does not interfere with any operator who desires to drive a bus or taxicab into such space.

SECTION 413. METHOD OF PARKING. All parking shall be parallel to the curb or the edge of the roadway where a curb does not exist, right wheels resting within 18 inches of the curb or edge of the roadway, except where individual parking spaces provided with parking meters or lines indicate otherwise.

SECTION 414. PLACES OF ASSEMBLAGE. The City Manager or Police Chief hereby is authorized to place temporary or permanent traffic control signs in front of the entrance to places of assemblage or any building in which entertainments, plays, shows, exhibitions and the like are given, either regularly or otherwise, and for such period as the City manager or Police chief in his discretion may deem wise under the circumstances.

The City Manager or Chief of Police is hereby authorized to place temporary traffic control signs on any street or public way under control of the City where parking for any event or gathering will create a traffic hazard.

SECTION 415. SNOW REMOVAL. No vehicle shall be parked at any time on any public street or way or city-owned parking area so as to interfere with or hinder the removal of snow from the street or way or city-owned parking area by the City plowing or loading and hauling. Any police officer may cause any vehicle so parked to be removed from the street and placed in a suitable parking space off of the street, at the expense of the owner of such vehicle and without the City being liable for any damage that may be caused by such removal. For the purpose of facilitating the removal of snow the City manager may cause to be placed properly marked signs along any street or streets as he shall from time to time deem necessary.

SECTION 416. STREET SWEEPING. The foreman of the City Highway Department shall mark or cause to be marked with temporary signs, public ways or city-owned parking areas for which the highway department wishes to sweep. The signs shall specify the date and times during which parking shall be unlawful. The signs shall be placed at the locations a minimum of 24 hours prior to the period during which parking becomes illegal. The signs shall be removed as soon as possible after the sweeping is completed. Any police officer may cause any vehicle parked in violation to be removed from the parking space and placed in a suitable parking space at the expense of the owner of such vehicle and without the City being liable for any damage that may be caused by such removal.

SECTION 417. ALL NIGHT PARKING PROHIBITED. No person shall park a vehicle on any street or way for a period of longer than thirty (30) minutes between the hours of twelve midnight and 6:00 a.m. of any day from November 1 of each year to April 1 of the following year, except physicians on emergency calls.

SECTION 418. UNLAWFUL PARKING. No person shall park a vehicle upon any roadway for the principal purpose of: (1) advertising; (2) displaying such vehicle for sale; or (3) greasing or repairing such vehicle except repairs necessitated by an emergency.

SECTION 419. PENALTIES. The operator or owner of any vehicle charged with a violation of Section 405 (Overtime Parking) of this Article may waive all court action by the payment of a waiver fee of ten dollars (\$10.00) at the Police Department prior to the expiration of the 30 day period proceeding the issuance of the parking ticket as stated on the Notice of Illegal Parking.

The operator or owner of any vehicle charged with a violation of Section 411 (Handicapped Parking) of this Article may waive all court action by the payment of a waiver fee of fifty dollars (\$50.00) at the Police Department prior to the expiration of the 30 day period proceeding the issuance of the parking ticket as stated on the Notice of Illegal Parking.

The operator or owner of any vehicle charged with a violation of any other section of this Article may waive all court action by the payment of a waiver fee of twenty-five (\$25.00) at the Police Department prior to the expiration of the 30 day period proceeding the issuance of the parking ticket as stated on the Notice of Illegal Parking.

In addition to sections of this ordinance which specifically allow for towing violations, a police officer may tow any vehicle parked in violation of this article at the expense of the owner of such vehicle and without the City being liable for any damage caused by such removal when that vehicle is parked in a fire lane, blocking a fire hydrant, parked and left unattended in a bus stop, parked on a sidewalk so as to obstruct pedestrian traffic or parked in such a manner as to create a traffic hazard.

Any owner or operator of any vehicle charged with five (5) or more violations of any of the parking regulations set forth in this Article in any consecutive 30 day period may be required to forfeit the court waiver fees, and be ordered to appear in court. Any person summonsed to District Court for a parking violation and found guilty of the alleged violation may be required to pay for court costs in addition to the fine for the violation.

** **SECTION 420. FINES.** Any person, firm or corporation who shall violate any provision of this ordinance shall be punished by a fine of not more than \$100 nor less than \$25.00 for each offense, to be recovered by complaint of any police officer of the City of Ellsworth.

Article 4 & 5 Repealed and Replaced With New Article 4 11/19/90

** Added 05/20/91

ARTICLE 6. OPERATION OF VEHICLES

SECTION 601. **BACKING LIMITATION.** The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

SECTION 602. **CLINGING TO MOTOR VEHICLES.** No person riding upon any motorcycle, coaster, sled, roller skates, or any toy vehicle shall attach the same or himself to any moving vehicle upon any roadway.

SECTION 603. **ENTERING TRAFFIC FROM CURB.** The driver of vehicle starting from a curb or roadway edge shall yield the right-of-way to all moving traffic on the roadway. He shall not enter or attempt to enter such moving traffic until he can do so safely.

SECTION 604. **ENTERING TRAFFIC FROM ALLEY OR PRIVATE DRIVEWAY.** The driver of a vehicle emerging from any alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

SECTION 605. **FOLLOWING FIRE APPARATUS.** The driver of any vehicle shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block, and not closer than 500 feet to where fire apparatus has stopped in answer to a fire alarm.

SECTION 606. **FIRE HOSE.** No person shall drive a vehicle over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department or police department.

SECTION 607. **LITTER.** No person shall drive a vehicle over any street in such a manner that material, rubbish, refuse, junk or litter of any kind drips, sifts, leaks, drops or otherwise escapes therefrom or drops upon the surface of such highway, street or alley.

SECTION 608. **NOISE.** No person shall sound an automobile horn, bell or other sound device on any vehicle anywhere in the City at any time, except when necessary for safe driving. No person shall drive a motor vehicle, except a fire department vehicle, on a street unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive noise and annoying smoke, nor use a muffler cut-out on any vehicle, except a fire department vehicle, upon any street.

SECTION 609. OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES. Upon the immediate approach of an authorized emergency vehicle, when the driver thereof is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position as close as possible to the right hand curb or edge of the roadway, clear of intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

SECTION 610. REPORT OF ACCIDENT. The driver of any vehicle involved in an accident resulting in injuries to or death of any person or property damage to the estimated amount of \$200 or more shall give immediate notice to the Ellsworth Police Department as is provided by Section 891 of Chapter 11, Title 29 of the Public Laws of Maine.

SECTION 611. RIGHT-OF-WAY, INTERSECTING WAYS AND ENTRANCES OF PRIVATE ROADS. All vehicles shall have the right-of-way over other vehicles approaching at intersecting public ways, except traffic circles or rotary intersections, from the left and shall give the right-of-way to those approaching from the right, except that traffic officers stationed at such intersections may otherwise regulate traffic threat. The drive of a vehicle entering a public way from a private road, alley, driveway or building shall yield the right-of-way to any pedestrian approaching on said public way or sidewalk and before crossing any sidewalk or before entering such public way where no sidewalks shall exist, shall proceed cautiously across said sidewalk or into said public way. "Private Road" as used in this section shall be construed to include a private road, a private way of any description, an alleyway or a driveway.

SECTION 612. SIDEWALKS. The driver of a vehicle shall not drive or ride within any sidewalk area except at a permanent or temporary driveway.

613.1 CAREFUL SPEED. Any person driving a vehicle on a way or in any other place shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the way or place, and of any other conditions then existing.

613.2 RATES OF SPEED. Except where the conditions contained in subsection 613.1, the following maximum rates of speed are established.

A. Speed in excess of 15 miles an hour when passing a school during recess or while children are going to or leaving school during opening or closing hours shall be unlawful.

B. Speed in excess of 15 miles an hour when approaching within 50 feet and in traversing an intersection of ways when the driver's view is obstructed shall be unlawful, except where preference is given to through movement of traffic in one direction at the expense of cross traffic by utilization of "Stop" signs or other control devices or by direction of a traffic officer. A driver's view shall be deemed to be obstructed when at any time during the last 50 feet of his approach to such intersection he does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the ways entering such intersection for a distance of 200 feet from such intersection.

C. Speed in excess of 25 miles an hour in a business or residential district, or built-up portion, as defined in subsection 3 shall be unlawful unless a different speed is fixed by the municipal officers with the approval of the Department of Transportation, with the consent and approval of the Chief of the Maine State Police, and such speed is duly posted.

D. Speed in excess of 45 miles an hour shall be unlawful unless otherwise posted.

E. Speed of mobile homes, however drawn, in excess of 45 miles per hour in the daytime or nighttime shall be unlawful.

F. School buses shall not be operated at a speed in excess of 45 miles per hour except that when used for purposes of an educational trip or for transporting pupils to an from any extra-curricular activity a school bus may be operated at a speed not exceed 50 miles per hour.

G. Speed of any motor driven cycle in excess of 35 miles per hour at any time mentioned in section 1071, unless such motor driven cycle is equipped with a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead, shall be unlawful.

In every charge of violation of a speed limit, the complaint and the summons or notice to appear shall specify the speed at which the respondent is alleged to have driven.

613.3 **DEFINITIONS.**

A. **COMPACT OR BUILT-UP PORTIONS.** The compact or built-up portions of any municipality shall be the territory of any municipality contiguous to any way which is built up with structures which are situated less than 150 feet apart for a distance of at least 1/4 mile. Municipal officers may designate such compact or built-up portions by appropriate signs.

B. DAYTIME AND NIGHTTIME. Daytime for purposes of this section shall mean from 1/2 hour before sunrise to 1/2 hour after sunset. Nighttime shall mean any other hour. "Sunrise" and "Sunset" shall be the time given in the Maine Farmer's Almanac.

SECTION 614. SNOW PLOWS. The driver of any vehicle other than one on official business shall not follow closer than 200 feet to any snow plow engaged in plowing. the driver of any vehicle meeting a snow plow on a roadway plowing shall turn off on anther street if practicable, otherwise, shall come to a complete stop at least 50 feet away from said plow and not start again until the plow has passed.

SECTION 615. TRAFFIC LAW VIOLATION TICKETS. No person shall remove from any vehicle a traffic law violation ticket, notice or citation placed on or in such vehicle by a police officer of the City, except for the purpose of answering such notice or citation as required therein.

SECTION 616. TRAFFIC OBSTRUCTION. No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

SECTION 617. TURN AROUND. The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district, and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

SECTION 618. UNATTENDED VEHICLE. No person driving or in charge of a motor vehicle shall permit it to stand on any roadway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle. No person shall allow an animal-drawn vehicle to be unattended unless it is reasonably fastened.

SECTION 619. UNLAWFUL ACTS. No person shall throw or place or cause to be thrown or placed upon any highway, any glass, glass bottle, nails, tacks, wire, scrap metal, crockery, cans or any other substance injurious to the feet of persons or animals or to tires or wheels of vehicles. Whoever accidentally, or by reason of accident, drops from his hand or a vehicle any such substance upon any highway shall forthwith make all reasonable efforts to clear such highway of the same.

SECTION 620. CURB LOADING ZONE. The City Manager may designate spaces as curb loading zones on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public. He shall cause such space to be designated by appropriate signs or curb markings or both. No person shall stop, stand or park a vehicle in any such place between the hours of 8:00 a. m. and 6:00 p. m. on any day except Sundays and public holidays when same has been officially designed and appropriately marked, except for the purpose of and while actually engaged in loading or unloading passengers for a period not to exceed three minutes, or in loading or unloading materials for a period not to exceed 30 minutes.

SECTION 621. THROUGH STREETS. The following streets and parts of streets, having been so designated by the Maine State Highway Commission as provided by M. R. S. A., title 29, Section 948, are hereby declared to be through streets:

621.1. **THROUGHWAY** - U. S. #1A from the Dedham town line -Ellsworth city line via S. H. 43-1 to the junction of U. S. Routes #1 and #1A, State Route #3, and State Aid Highway #3 (Main Street).

621.2 **THROUGHWAY** - State Aid Highway #7, from the junction of U. S. Route 1A and State Aid Highway 37, via State Route 179 to the Ellsworth city line - township 8 S. D. town line.

621.3 **THROUGHWAY** - State Aid Highway #8, from the junction of State Aid Highway 37 and State Aid 38, via State Route 180 to the Ellsworth city line-Otis town line.

621.4 **THROUGHWAY** - State Aid Highway #3 from the junction of U. S. Routes 1 and 1A, State Route 3, and State Highway #3, via Main Street to the Ellsworth city line-Hancock town line.

621.5 **THROUGHWAY** - State Aid Highway #12, from the junction of U. S. Route 1A and State Aid Highway #12 via Infant Street and Christian Ridge Road to the junction of State Aid Highway #12 and U. S. Route 1 and State Route 3.

621.6 **THROUGHWAY** - U. S. Route 1 and State Route 3, from the Orland town line/Ellsworth city line via State Highway 42-1 to the junction of U. S. Routes 1 and 1A, State Route 3 and State Aid Highway 3, all traffic on intersecting ways to **STOP** for traffic on U. S. Route 1 and State Route 3 with the following exception:

A) Junction of U. S. Route 1 and State Route 3 and State Route 172, eastbound traffic on U. S. Route 1 and State Route 3 to **YIELD** to traffic within or approaching the intersection.

621.7 THROUGHWAY - State Route 172, from the junction of U. S. Route 1 and State Route 3 and State Route 173 via S.H. 250-1 to the Ellsworth city line/Surry town line.

621.8 THROUGHWAY - State Route #230, from the junction of U. S. Route 1 and State Route 3 and State Route 230, via State Aid Highway #9 to the Ellsworth city line/Trenton town line.

621.9 THROUGHWAY - U. S. Route 1, from the junction of U. S. Route 1, 1A, State Route 3 and State Aid Highway #3, via S. H. 43-1 and S. H. 44-1 to the Ellsworth city line/Hancock town line. All traffic on intersecting ways to **STOP** for traffic on U. S. Route #1, with the following exception:

A) Junction of U. S. Route #1 (F.A.P. 43-1 and F.A.P. 44-1) and State Route 3 (F.A.P. 43-1), northbound traffic on State Route 3 to **YIELD** to traffic within or approaching the intersection.

621.10 THROUGHWAY - State Aid Highway #6, from the junction of U. S. Route 1A and State Aid Highway #6, via State Street to the junction of Route 1 and State Route 3, and State Aid Highway #6.

621.11 THROUGHWAY - State Route 3, from the junction of Route 1 and State Route 3, via S. H. 43-1 to the Ellsworth city line/Trenton town line.

621.12 THROUGHWAY - Fourth Street (S. A. #14), from the junction of Fourth Street and State Street (S. A. #6) to the northerly terminus of Fourth Street.

621.13 STOP INTERSECTION - Junction of States Routes #179 and #180 (S. A. #7) and U. S. Route 1A; all traffic on State Routes 179 and 180 to **STOP** before entering the intersection.

621.14 STOP INTERSECTION - Junction of State Aid Highway #12 (Infant Street) and U. S. Route 1A; all traffic on State Aid Highway #12 to **STOP** before entering the intersection.

621.15 STOP INTERSECTION - Junction of State Street (S. A. #6) and U. S. route 1A (F. A. P. 43-1); all traffic on State Street to **STOP** before entering the intersection.

621.16 STOP INTERSECTION - Junction of State Aid Highway #12(Christian Ridge Road) and U. S. Route 1 and State Route 3; all traffic on State Aid Highway #12 to **STOP** before entering the intersection.

621.18 STOP INTERSECTION - Junction of State Route 180 (S. A. #8) and State Route 179 (S. A. #7); all traffic on State Route 180 to **STOP** before entering the intersection.

621.19 STOP INTERSECTION - Junction of Hancock Street and Pine Street (S. A. #13); all traffic on Franklin Street to **STOP** before entering the intersection.

621.20 STOP INTERSECTION - Junction of Oak Lane and Pine Street (S. A. #1); all traffic to **STOP** before entering the intersection.

621.21 STOP INTERSECTION - Junction of City Hall Avenue and Church Street (S. A. #16); all traffic on City Hall Avenue to **STOP** before entering the intersection.

621.22 STOP INTERSECTION - Junction of Church Street (S. A. #16) and School Street (S. A. #15); all traffic on Church Street to **STOP** before entering the intersection.

621.23 STOP INTERSECTION - Junction of Park Street and School Street (S. A. #15); all traffic on Park Street to **STOP** before entering the intersection.

621.24 STOP INTERSECTION - Junction of Fourth Street (S. A. #14) and State Street (S. A. #6); all traffic on Fourth Street to **STOP** before entering the intersection.

621.25 STOP INTERSECTION - Junction of State Aid Highway #11 and S. H. C. Inventory Road #358; all traffic on State Aid Highway #11 to **STOP** before entering the intersection.

621.26 STOP INTERSECTION - Junction of Birch Street and School Street (S. A. #15); all traffic on birch Street to **STOP** before entering the intersection.

621.27 STOP INTERSECTION - Junction of Winkumpaugh Road and U. S. Route 1A; all traffic on Winkumpaugh Road to **STOP** before entering the intersection.

621.28 STOP INTERSECTION - Junction of Union Street and Main Street (S. A. #3); all traffic on Union Street to **STOP** before entering the intersection.

621.29 STOP INTERSECTION - Junction of SHC Inventory Road #358 and S. A. #12; all traffic on S. H. C. Inventory Road #358 to **STOP** before entering the intersection.

621.30 STOP INTERSECTION - Junction of Forest Avenue, Shore Road and Fourth Street; all traffic on Forest Avenue to **STOP** before entering the intersection.

621.31 STOP INTERSECTION - Junction of Grant Street and West Main Street (R 1 & 3)

621.32 STOP INTERSECTION - Junction of Grant Street and Christian Ridge Road (S. A. 312).

621.33 STOP INTERSECTION - Junction of South Street and West Main Street (R 1 & 3).

SECTION 622. The following streets and parts of streets are designated by the municipal officers of the City of Ellsworth as throughways and stop or yield intersections:

622.1 THROUGHWAY - Union Street from the junction of Union Street and State Aid Highway #3 (Main Street) to the Ellsworth city line/Hancock town line.

622.2 THROUGHWAY - Winkumpaugh Road, from the junction of U. S. route 1A and Winkumpaugh Road to the Ellsworth city line/Orland town line.

622.3 THROUGHWAY - S.H.C. Inventory Road #358 (Branch Lake Road), from the junction of State Aid Highway #12 (Christian Ridge Road) and S.H.C. Inventory Road #358 to the westerly terminus of S.H.C. Inventory road #358.

622.4 STOP INTERSECTION - Junction of West Maple Street and Laurel Street; all traffic on West Main Street to **STOP** before entering the intersection.

622.5 STOP INTERSECTION - Junction of Laurel Street and South Street; all traffic on Laurel Street to **STOP** before entering the intersection.

622.6 STOP INTERSECTION - Junction of Young's Avenue and Chapel Street; all traffic on Young's Avenue to **STOP** before entering the intersection.

622.7 STOP INTERSECTION - Junction of Willow Street and Chapel Street; all traffic on Willow Street to **STOP** before entering the intersection.

622.8 STOP INTERSECTION - Junction of Willow Street and Grant Street; all traffic on Willow Street to **STOP** before entering the intersection.

622.9 STOP INTERSECTION - Junction of Liberty Street and Grant Street; all traffic on Liberty Street to **STOP** before entering the intersection.

622.10 STOP INTERSECTION - Junction of Mae Street, Sterling Street and Royal Street; all traffic on Royal Street to **STOP** before entering the intersection.

- 622.11 STOP INTERSECTION - Junction of Mae Street and Third Street; all traffic on Mae Street to **STOP** before entering the intersection.
- 622.12 STOP INTERSECTION - Junction of Wood Street and Third Street; all traffic on Wood Street to **STOP** before entering the intersection.
- 622.13 STOP INTERSECTION - Junction of H & S Drive and Forest Avenue; all traffic on H & S Drive to **STOP** before entering the intersection.
- 622.14 STOP INTERSECTION - Junction of Argonne Street, Memorial Road and Forest Avenue; all traffic on Argonne Street and Memorial Road to **STOP** before entering the intersection.
- 622.15 STOP INTERSECTION - Junction of Memorial Road, Fifth Street and Pond Avenue; all traffic on Pond Avenue to **STOP** before entering the intersection.
- 622.16 STOP INTERSECTION - Junction of Jude Lane and Fifth Street; all traffic on Jude Lane to **STOP** before entering the intersection.
- 622.17 STOP INTERSECTION - Junction of Fox Street and Birch Avenue; all traffic on Fox Street to **STOP** before entering the intersection.
- 622.18 STOP INTERSECTION - Junction of Spring street and Birch Avenue; all traffic on Spring Street to **STOP** before entering the intersection.
- 622.19 STOP INTERSECTION - Junction of Spring Street and Park Street; all traffic on Spring Street to **STOP** before entering the intersection.
- 622.20 STOP INTERSECTION - Junction of Bayview Avenue and Park Street; all traffic on Bayview Avenue to **STOP** before entering the intersection.
- 622.21 STOP INTERSECTION - Junction of Spring Street and Lincoln Street; all traffic on Spring Street to **STOP** before entering the intersection.
- 622.22 STOP INTERSECTION - Junction of Lincoln Street and Bayview Avenue; all traffic on Lincoln Street to **STOP** before entering the intersection.
- 622.23 STOP INTERSECTION - Junction of Spring Street and Church Street; all traffic on Spring Street and westbound traffic on Church Street to **STOP** before entering the intersection.
- 622.24 STOP INTERSECTION - Junction of Church Street and Bayview Avenue; all traffic on Church Street to **STOP** before entering the intersection.
- 622.25 STOP INTERSECTION - Junction of Oak Lane and Elm Street; all traffic on Oak Lane to **STOP** before entering the intersection.

622.26 STOP INTERSECTION - Junction of Hancock Street and Dean Street; all traffic on Hancock Street to **STOP** before entering the intersection.

622.27 STOP INTERSECTION - Junction of Elm Street and Hancock Street; all traffic on Elm Street to **STOP** before entering the intersection.

622.28 STOP INTERSECTION - Junction of Spruce Street and Hancock Street; all traffic on Spruce Street to **STOP** before entering the intersection.

622.29 STOP INTERSECTION - Junction of S.H.C. Inventory Road #353 (Happytown Road) and S.H.C. Inventory Road #3205 (Branchview Drive); northbound traffic on S.H.C. Inventory Road #353 to **STOP** before entering the intersection.

622.30 STOP INTERSECTION - Junction of Western Avenue and Argonne Street; all traffic on Argonne Street to **STOP** before entering the intersection.

622.31 STOP INTERSECTION - Junction of Birch Avenue and Garden Street; all traffic on Garden Street to **STOP** before entering the intersection.

622.32 STOP INTERSECTION - Junction of Park Street and Garden Street; all traffic on Garden Street to **STOP** before entering the intersection.

622.33 On any other intersection where the City manager deems it necessary for public safety and causes a stop sign to be erected. The erection of a stop sign shall be prima facie evidence that the stop intersection is authorized.

* 622.34 STOP INTERSECTION - Junction of Boggy Brook Road and Vittum Road; all traffic on Vittum Road to stop before entering the intersection.

** SECTION 623 - ONE WAY STREETS - The following streets or parts of streets are hereby declared to be one way streets:

623.1 ONE WAY STREET - Boggy Brook Road - beginning at U. S. Route 1A and proceeding to the intersection of the Vittum Road, one way in a northerly direction.

*** SECTION 630 - LEFT TURNS PROHIBITED - No person shall operate a motor vehicle in such a manner as to permit said vehicle to turn left from the first named street onto the second named intersecting street.

630.11 East Maple Street onto High Street

630.12 South Street onto Main Street

* Added 11/17/80

** Added 11/17/80

*** Added 7/15/96

ARTICLE 7. PEDESTRIANS

SECTION 701. **PEDESTRIAN'S RIGHT-OF-WAY IN CROSSWALK.**

When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

SECTION 702. **CROSSING AT OTHER THAN CROSSWALKS.** Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

SECTION 703. **CROSSING AT RIGHT ANGLES.** No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk.

SECTION 704. **DRIVERS TO EXERCISE DUE CARE.** Notwithstanding the foregoing provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

ARTICLE 8 MISCELLANEOUS

SECTION 801. PENALTIES. Unless another penalty is expressly provided by State law, any person convicted of a violation of any provision of this Ordinance shall be punished by a fine of not more than \$100 nor less than \$10.

SECTION 802. SEPARABILITY. If any part or parts of this Ordinance are held by a court of competent jurisdiction to be invalid, it is the legislative intent of the City Council that such decision shall not affect the validity of the remaining portions of this ordinance.

ARTICLE 9. BEALS AVENUE RESTRICTED

SECTION 901. No vehicle exceeding 6,000 pounds gross weight or dual-wheel vehicle shall be operated at any time upon or over Beals Avenue or any part thereof.

SECTION 902. **EXCEPTIONS.** This ordinance shall not apply as follows:

902.01. **OPERATION ON STREET OF DESTINATION.** The operation of vehicles when necessary to the conduct of business at a destination point on Beals Avenue, provided the vehicle shall enter said Beals Avenue at the intersection nearest the destination point of the vehicle. 902.2 Emergency Vehicles and School Buses.

902.3 **PUBLIC UTILITIES.** The operation of vehicles owned or operated by the City of Ellsworth, public utilities, any contractor or material man, while engaged in the repair, maintenance or construction of the street, street improvement or street utilities, within the limits of the street.

902.4 **DETOURED TRUCKS.** The operation of vehicles upon any officially established detour.

SECTION 903. **PENALTY.** Whoever violates any provision of this ordinance shall, upon conviction, be punished by a fine of not more than \$100 nor less than \$10.

SECTION 904. **GARDEN STREET RESTRICTED.** No through trucks to be allowed on Garden Street.

ARTICLE 10. RED BRIDGE ROAD WEIGHT RESTRICTION⁸

SECTION 1001. WEIGHT LIMIT IMPOSED.

No motor vehicle or trailer in excess of 36,000 pounds gross registered weight shall travel on Red Bridge Road except as provided herein.

SECTION 1002. EXEMPTIONS. The following motor vehicles and trailers are exempted from the restriction imposed by Section 1001:

1002.1 Any vehicle or trailer whose destination is a property located on Red Bridge Road or a road that may only be accessed via Red Bridge Road, whether for the purpose of providing services or delivering goods thereto or because the vehicle or trailer is principally housed thereon;

1002.2 Any emergency vehicle or trailer;

1002.3 Any vehicle or trailer operated by a municipal, state, or federal government; or

1002.4 Any vehicle or trailer as otherwise directed by the Ellsworth Police Department.

SECTION 1003. NOTICES.

Notices specifying the restrictions created by this Article shall be conspicuously posted at each end of Red Bridge Road.

SECTION 1004. ENFORCEMENT.

In accordance with 29-A M.R.S.A. § 2395(6) and (7), a violation of this Article is a traffic infraction punishable by a fine, which may not be suspended, of not less than \$250.

SECTION 1005. SUNSET.

This Article shall automatically repeal on January 1, 2012, unless earlier repealed. The repeal of this Article, whenever accomplished, shall not affect any pending enforcement actions.

⁸ Added Entire Article 10 09/21/2009

ARTICLE 11. SHORE ROAD WEIGHT RESTRICTION⁹

SECTION 1101. WEIGHT LIMIT IMPOSED.

No motor vehicle or trailer in excess of 36,000 pounds gross registered weight shall travel on Shore Road except as provided herein.

SECTION 1102. EXEMPTIONS. The following motor vehicles and trailers are exempted from the restriction imposed by Section 1001:

1102.1 Any vehicle or trailer whose destination is a property located on Shore Road or a road that may only be accessed via Shore Road, whether for the purpose of providing services or delivering goods thereto or because the vehicle or trailer is principally housed thereon;

1102.2 Any emergency vehicle or trailer;

1102.3 Any vehicle or trailer operated by a municipal, state, or federal government; or

1102.4 Any vehicle or trailer as otherwise directed by the Ellsworth Police Department.

SECTION 1103. NOTICES.

Notices specifying the restrictions created by this Article shall be conspicuously posted at each end of Shore Road.

SECTION 1104. ENFORCEMENT.

In accordance with 29-A M.R.S.A. § 2395(6) and (7), a violation of this Article is a traffic infraction punishable by a fine, which may not be suspended, of not less than \$250.

⁹ Added entire Article 11 on 02/09/2015, with an effective 04/01/2015.

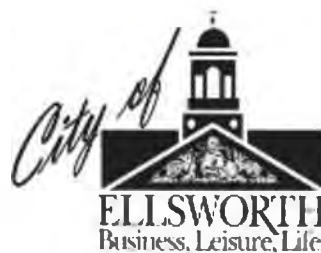
City of Ellsworth

Chapter 8

TAXICAB ORDINANCE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Amended 05/16/2016

Amended 05/15/2017

Objective of the Ordinance is to protect the safety and welfare of persons hiring taxicabs within the City of Ellsworth in conjunction with compliance from taxicab owners to enhance the passenger experience.

Section 101. Definition. Every motor vehicle used or to be used for the conveyance of persons for hire from place to place within the City shall be deemed a taxicab within the meaning of this ordinance except a motor vehicle subject to regulation by the Public Utilities Commission of the State of Maine, and motor vehicles collecting fares by tickets or coupons for interstate transportation.

Section 102. Owner's License. The owner of every such motor vehicle shall apply for an owner's license; application therefore shall set forth the name and address of applicant, trade name under which applicant does or proposes to do business, where proposed stands and garages are or are to be located, the number of vehicles the applicant desires to operate, a clear description of such vehicle and such other facts as the City Clerk may require.

Section 103. Taxicab Markings. Every vehicle thus licensed shall have the name of the company and the word "TAXI" plainly lettered not less than two inches in height on the main panel of each rear door, or other conspicuous place.

Section 104. Driver's License. No person shall drive or operate a taxicab unless duly licensed as a taxicab driver. No such license shall be issued to any person without a valid Maine State operator's license certified by the Police Chief or his designee. A valid license from another State can be certified by the Police Chief or his designee in cases where an employee is working in Maine on a temporary basis for example during the summer months only.

Section 105. Temporary Driver's License. A temporary driver's license will be issued when a taxicab owner desires to designate a new hire with a probation status. This driver's license will have a term to expire ten (10) calendar days from the date of issue. All the provisions described in Section 104, Driver's License must be complied with prior to a Temporary Driver's License being issued. The only advantage to the taxicab owner is the fee for the Driver's License will be waived until the ten (10) calendar days period has expired and/or the taxicab owner makes the decision to retain the employee.

Section 106. Driver's Identification. The City Clerk shall deliver to each licensed driver an identification card setting forth the date of issue, expiration date of each license, name, address, photo of driver, and physical description of the licensee including date of birth, sex, height, and weight. This card shall at all times be displayed prominently in the cab driven by the licensee or carried upon his/her person; if carried upon his/her person, the licensee shall exhibit the same to any passenger or officer of the law, who may so request.

Section 107. Vehicle Inspection. Every Taxi owner shall present each taxicab listed on the Owner's License issued by the City of Ellsworth to the Police Chief or his designee for inspection whenever the Police Chief or his designee so requires, during the 1st full week of January and the 3rd week of July of each calendar year, Monday thru Friday between 8 AM and 4 PM, and at the time of initial licensing or addition to an existing license. The inspection process will be conducted in compliance with the City of Ellsworth Vehicle Compliance Report (see Attachment A). This inspection process will be a general overview of the vehicle, not intended to be a State certified inspection, nor does this preclude the vehicle from having a State Certified Inspection. If a taxi is not inspected during the designated weeks for renewals, or on the day a new taxi is licensed or added to an existing license that specific taxi will be suspended from use. If the taxi fails the inspection outlined in Attachment A; it will be suspended immediately from use until such time it can be re-inspected and successfully pass the inspection outlined in Attachment A.

Section 108. Penalty. Unless otherwise specifically provided by law, the penalty for failure to obtain an Owner's License, Driver's License, or Temporary Driver's License as required by this ordinance is hereby determined to be twice the amount of the required license. The fee will be collected by the City Clerk at the time of issuing the license.

Any person who violates the provisions found in Section 107. "Vehicle Inspection" of the City of Ellsworth Chapter 8 Taxicab Ordinance commits a civil ordinance violation for which a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00) may be imposed for each day such offense continues and the City's reasonable fees and expenses, including attorney's fees to prosecute such ordinance violation. Each infraction against Section 107 will constitute a separate offense for each day the violation occurs.

**CITY OF ELLSWORTH
TAXICAB
VEHICLE COMPLIANCE REPORT**

Please designate Pass with a "P" and Fail with an "X" in the space provided.

- _____ All lights in proper working order (head, tail, directional, flashers, dash, and top light)
- _____ Business Name and word "TAXI" plainly lettered not less than two inches in height on the main panel of each rear door, or other conspicuous place. **Name must match registration.**
- _____ Passenger Bill of Rights and "NO Smoking" signs are prominently displayed
- _____ No visible tears in carpeting or upholstery
- _____ No dents larger than six (6) inches in diameter
- _____ No exhaust leaks
- _____ No fluid leaks
- _____ No loose trash or large amounts of dirt or sand in the interior passenger area
- _____ No missing trim or body work
- _____ No cracks in windshield or windows
- _____ Seat belts for all passenger seats visible and in working order
- _____ Operational jack and inflated spare tire in vehicle
- _____ No bald spots on tires
- _____ No missing hubcaps
- _____ No visible primer paint
- _____ No rust greater than one (1) inch in diameter
- _____ Current State of Maine Inspection sticker # _____

Signature of Examiner

Date

Taxi Business Name

Last eight #'s of VIN

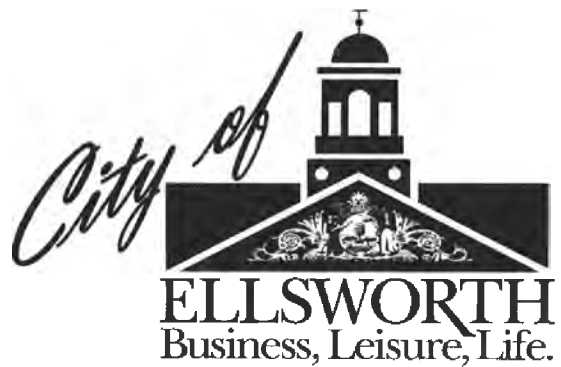
Hire Plate #

Fleet # (if applicable)

City of Ellsworth Ordinances
Chapter 9

Sign Ordinance

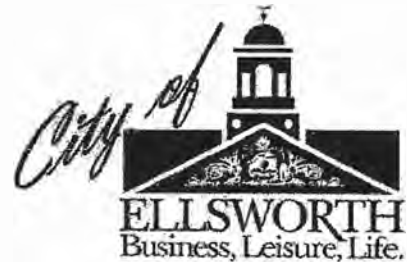
This ordinance was repealed.



CHAPTER 10
MAINTENANCE, ADMINISTRATION AND DISPOSITION OF
TAX ACQUIRED PROPERTY
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted 6/17/1985
Amended 12/16/1996
Repealed/Replaced 04/19/2010
Amended 08/16/2010

CHAPTER 10
ORDINANCE FOR THE MAINTENANCE, ADMINISTRATION AND
DISPOSITION OF TAX ACQUIRED PROPERTY

ARTICLE I. GENERAL

Section 1. Short Title

This ordinance is hereby adopted in accordance with the provisions of Title 30-A MRSA, Section 3001, as amended and shall be known as and may be cited as the "*Ordinance for the Maintenance, Administration and Disposition of Tax Acquired Property for the City of Ellsworth*" and shall be referred to herein as the "Ordinance".

Section 2. Purpose

The purpose of this Ordinance is to establish and dictate a procedure whereby real property, ¹recently acquired in accordance with 36 MRSA, Sections 942 and 943, as amended, shall be managed, administered and disposed of by the City of Ellsworth. ²This ordinance does not dictate procedure of City Property which may be disposed of by the City Council as they deem advisable.

Section 3. Definitions

For the purpose of this Ordinance, the following terms shall have the following definitions:

- ³a. **"City Property"** shall mean all property owned by the City except for tax acquired property as defined below.
- b. **"Foreclosed Tax Lien"** shall mean a tax lien mortgage that has automatically foreclosed pursuant to the provisions of 36 MRSA, Section 942 and Section 943, as amended.
- c. **"Mail"** shall mean regular, first class mail, postage prepaid.
- d. **"Municipality"** shall mean the City of Ellsworth.
- e. **"Prior Owner"** shall mean the person or persons, entity or entities, heirs or assigns to whom the property was most recently assessed for municipal tax purposes.
- f. **"Quit Claim Deed"** shall mean a signed, legal instrument releasing the municipality's right, title or interest in the real estate property, acquired by virtue of foreclosed tax liens, to an individual or individuals, entity or entities without providing a guarantee or warranty of title to same.

¹ Amended August 16, 2010

² Amended August 16, 2010

³ Amended August 16, 2010

g. **"Real Property"** shall mean all land or lands and all structures, buildings, dwellings, tenements and hereditaments, including manufactured homes, located or relocated upon any land or lands connected therewith and all rights thereto and interests therein.

h. **"Tax Acquired Property"** shall mean that real property acquired by the municipality by virtue of a foreclosed tax lien as defined above⁴ within five (5) years of the date of foreclosure. Following expiration of five years of City ownership, tax acquired property shall be deemed to be City Property.

i. **"Tax Lien"** shall mean the statutory lien created by 36 MRSA, Section 552, as amended.

ARTICLE II. MANAGEMENT AND ADMINISTRATION

Section 1. Following statutory foreclosure of a tax lien mortgage, title to the real property automatically passes to the municipality. The management of this property rests exclusively with the City Council, subject to the applicable statutes, ordinances and regulations.

Section 2. The City Council may obtain fire loss insurance for tax acquired property with structures in a dollar value not less than all outstanding taxes, liens, costs and other attendant expenses.

Section 3. The City Council shall determine when and if any occupant of tax acquired property shall vacate the same.

Section 4. The City Council shall determine whether a tax acquired property is to be retained for municipal use or disposed of in accordance with the provisions of this ordinance.

Section 5. Should the City Council decide to retain tax acquired property for use by the City, it may take all actions necessary to establish clear title to the property.

Section 6. The City Council may charge a monthly rental fee to any and all occupants of tax acquired property. If a rental fee is charged the City Council shall obtain sufficient insurance coverage for the tax acquired property.

Section 7. The City Council shall obtain insurance coverage for tax acquired property at such time as the prior owner, his lessee or licensee, has ceased to occupy the same for a period of 60 days.

ARTICLE III. DISPOSITION OF TAX ACQUIRED PROPERTY

Should the City Council decide to dispose of tax acquired property, the following provisions shall be followed unless Article III-A applies:"

⁴ Amended August 16, 2010

⁵Section 1. As soon as possible following the automatic foreclosure, the Treasurer will mail a 30-day redemption notice by certified mail, return receipt request, to the person or entity against whom taxes were most recently assessed. The prior owner may redeem the property within 30 days from the date of the letter by paying all taxes in full including interest, costs, and current tax year. Payment must be made by cashier's check, postal money order, or cash.

⁶Section 2. The City Council shall solicit sealed bids for the sale of tax acquired property and shall receive bids on a date to be determined by the City Council.

Section 3. The City Council shall cause a public notice of the impending public sale of tax acquired property to be posted within the city building and to be advertised for two consecutive weeks in the ⁷newspaper of general circulation, the last notice to be published at least seven days prior to the advertised sale date.

Section 4. The City Council shall require the following for proper submission of bids:

- a. A bid sheet containing the Tax Map and Lot number(s) of the property being bid upon and the bid price.
- b. A certified cashier's check or postal money order in an amount not less than 10% of the bid price must be included as a deposit on the bid. Failure to submit a deposit shall cause the bid to be automatically rejected.

Section 5. The City Council shall require that those bid items cited above in Section 4, subsections a) and b), be sealed in a single plain envelope marked only "Tax Acquired Property Bid" on the exterior and either be hand delivered to the City Manager or, if mailed, to be enclosed within a second envelope addressed to the City Manager, City of Ellsworth. All bids must be received by the municipality on the date and time determined by the City Council in Section 2 above.

Section 6. The City Council shall not accept any bid that is less than the total outstanding taxes, interests and costs, current year taxes not assessed, and public notice costs and insurance costs.

Section 7. The City Council shall retain the right to accept or reject any and all bids submitted. Should the City Council reject all bids, the property may be offered again for public sale without notice to any prior owner or owners.

Section 8. The City Council shall notify by mail any successful bidder.

Section 9. The City Council shall, as a credit to payment, retain the submitted bid price deposit of any successful bidder and shall return all other submitted deposits.

Section 10. The City Council shall require payment in full from a successful bidder within 30 calendar days following the date when bids are opened and read. Should the bidder fail to pay

⁵ Amended August 16, 2010

⁶ Amended August 16, 2010

⁷ Amended August 16, 2010

the balance within 30 days the municipality shall retain the bid price deposit and title to the proffered property.

Section 11. The City Council may, subject to a show of good cause on the part of the bidder, extend the time limit in which full payment must be received by 20 additional days.

Section 12. The City Council shall convey title to tax acquired property by Quit Claim Deed.

Section 13. The successful bidder shall be responsible for the removal of any and all occupants of tax acquired property purchased by him and shall, in writing, forever indemnify and save harmless the municipality from any and all claims arising out of the sale of the tax acquired property by the occupants of the purchased property, their heirs or assigns. A signed, written document giving effect to the provisions of this section shall be delivered to the municipality with the balance of the purchase price.

****ARTICLE III-A SALE TO PRIOR OWNERS RESIDING ON THE PREMISES**

Section 1. This Article applies only to prior owners who personally reside on the premises of the tax-acquired property at the time the tax lien matured and continuously thereafter up to and including the time of the petition for repurchase noted below.

Section 2. Within thirty (30) days of the maturation of the oldest property tax lien encumbering the immediate prior owner of the tax acquired property may petition the City Council to repurchase the property.

Section 3. The City Council may, at its discretion, allow such repurchase if it deems the repurchase to be in the best interest of the City. The City Council shall establish the terms of the repurchase at the time it decides whether to allow such repurchase.

Section 4. In the event the City Council votes to allow the immediate prior owner to repurchase the property, the City Treasurer shall prepare a repurchase agreement. This agreement shall allow the immediate prior owner to repurchase the property upon payment of all back taxes, interest, charges and fees and all attorneys' fees incurred by the City in the repurchase process, plus any taxes and interest accrued during the term of the repurchase agreement. The repurchase agreement shall generally conform to the model found at Appendix A of this Ordinance.

Section 5. A repurchase agreement is not binding upon the City until it is reviewed by the City Attorney and signed by the City Council after a vote thereon.

Section 6. The City Council shall only give a Quitclaim Deed to convey title to the property. There shall be no transfer of title of the property until the repurchase agreement is satisfactorily performed by the repurchaser.

ARTICLE III-B – Other Sale and Disposition Procedures

Section 1. Should the City Council determine that tax-acquired property shall be relinquished rather than retained by the City, and the provisions of Article III have been completed in full a minimum of one (1) time and the provisions of Article III-A do not apply thereto and if bids

are not received for tax acquired property under the terms and conditions of Article III, then the City Council may dispose of tax acquired property as they deem advisable.

Section 2. Any sale of tax-acquired property shall be through public sale. The Finance Director, under the directive of the City Manager, shall oversee the exact terms and conditions of such sale and use his/her best judgment to seek the best and most expedient method of sale and return on the sale for the City. The City Council will have the right to accept or reject any sale.

Section 3. The price of tax acquired property, sold pursuant to this Article must be no less than the total outstanding taxes, interest, costs including, but not limited to, public notice costs and insurance costs, and current year taxes. The City Council may waive this provision if it concludes that doing so would be in the City's best interest.

Section 4. A public notice of tax acquired property available for sale under Article III-B to be posted within the city building, on the City website, and to be advertised for two consecutive weeks in the⁸ newspaper of general circulation.

ARTICLE IV. CONSTRUCTION AND ADOPTION

Section 1. The various Articles and Sections of this Ordinance are severable. Should any article or provision of this ordinance be declared invalid, such decision shall not invalidate any other Article or Section of this ordinance.

Section 2. The provisions of this ordinance shall not be deemed applicable to a release given by the City Council to any person or persons, entity or entities, the sole purpose of which is to remove any cloud upon title to property arising from defective or unrecorded discharges of tax liens.

Section 3. This ordinance shall become effective immediately upon adoption by the City Council.

Adopted 6/17/85 Amendments through 8/16/2010

⁸ Amended August 16, 2010

APPENDIX A

CITY OF ELLSWORTH

Land Installment Contract

This Land Installment Contract (hereinafter referred to as the "Agreement") is made this ___ day of _____, 20 ___, by and between the City of Ellsworth, One City Hall Plaza, Ellsworth, Maine 04605 (hereinafter referred to as the "City"), and _____, whose post office address is _____, (hereinafter referred to as the "Purchaser").

WITNESSETH:

1. SALE AND PREMISES. The City agrees to sell and convey to Purchaser and the Purchaser agrees to purchase, on the terms and conditions hereinafter set forth, the following described property (hereinafter referred to as the "Property"):

(a) Certain property described as Map# ____, Lot # ____, on the Ellsworth Tax Assessor's Maps for 20 ____, which are on file at the Ellsworth City Hall, being the same premises as described in a City of Ellsworth tax lien dated and recorded in the Hancock County Registry of Deeds in Book ____, Page ____, which lien foreclosed on _____. A copy of said deed is attached hereto as **Exhibit A**.

(b) The described property is sold "as is" without any warranties or representations whatsoever.

2. SALES PRICE. The total sales price for the property is \$ _____, which shall be paid as follows:

(a) Down payment of \$ _____ to be paid upon execution of this Agreement, receipt of which is hereby acknowledged by the City;

(b) The remaining principle balance of \$ _____ together with interest at the rate of _____ percent (____ %) per year, to be paid in _____ consecutive monthly installments of \$ _____, each due the third day of each month, starting on the month after this Agreement is executed. An amortization schedule showing the foregoing is attached hereto as **Exhibit B**.

2.1. CHARGES OR FEES. In addition to the sales price, and other matters stated herein, the Purchaser agrees to pay the following charges or fees for services:

APPENDIX A

3. PREPAYMENT. The buyer has the right to accelerate or prepay any installment payments without penalty, unless agreed to the contrary.

4. TAXES AND ASSESSMENTS. The Purchaser shall be responsible for the payment of taxes and any other fees, charges or assessments made under the law on the said property from the date of this Agreement, and any interest thereon, which is computed at a rate set by the City Council for the tax year(s) in question. These taxes, fees, charges or assessments shall be paid in full, in addition to the Sales Price, before a deed is delivered to the Purchaser by the City.

5. DELIVERY OF DEED. When the total amount of the obligations of the Purchaser under this Agreement have been paid in full, the City shall forthwith convey the property and transfer title to the Purchaser, by good and sufficient Municipal Quitclaim Deed Without Covenant. The property is to be sold "as is" without any warranties or representations whatsoever.

6. RISK OF LOSS: INSURANCE. The Purchaser assumes all risk of loss or damage to the premises by fire or otherwise and all liability for personal injury or property damage related to the use or occupancy of the property. Purchasing casualty and liability insurance is the Purchaser's responsibility alone, and the City will not procure or maintain such coverage for the Purchaser or otherwise indemnify the Purchaser against any such loss or damage liability.

7. SELLER'S REMEDIES FOR DEFAULT; BUYER'S RIGHT TO CURE
DEFAULT. If the Purchaser fails to make any payment or perform any covenant or obligation provided in this contract, then, at the City's option, the City may either:

(a) foreclose and terminate this Agreement in accordance with 14 M.R.S.A. § 6203-F, in which event the City may foreclose the rights of the Purchaser as provided therein following notice of a right to cure the default as stated in 14 M.R.S.A. § 6203-F(2), and upon such foreclosure and expiration of the redemption period, all rights of the Purchaser hereunder shall thereupon cease and terminate and all sums of money paid hereunder shall belong to and be retained by the City and treated as rent for the use and occupancy of the property and Purchaser shall immediately deliver to the City peaceful possession of said property, and City may forthwith re-enter said property and remove all persons therefrom; or

(b) The City may treat this Agreement as continuing, and may enforce the same either by specific performance or other appropriate remedy, including the right to declare the entire unpaid balance, together with accrued interest, at once due and payable without demand or notice, and the City shall also have the right to re-enter the property pending the payment thereof.

In addition to any other remedies, in case of failure of the Buyer to insure the property, make repairs, pay taxes or assessments, or make other payments required hereunder, the Seller may, at the Seller's option, insure the property, make the payments, or make the repairs

APPENDIX A

(it being agreed that for the purpose of making such repairs, the Seller may have free and uninterrupted access to the property) and all sums so paid shall be added to the amount due under this Contract, with interest accruing thereon at the same rate.

Failure to exercise any remedy shall not constitute a waiver of the City's right to exercise the same in the event of any subsequent default, nor shall Seller's election to treat the Agreement as continuing constitute a bar, upon the occurrence of future default or defaults, to elect again as to remedy. The Purchaser hereby waives presentment, demand, notice and protest, and agrees to pay all costs incurred by the City in pursuing the remedies provided in this paragraph 7, including reasonable attorneys' fees.

8. TITLE. The Purchaser acknowledges receipt from the City of a copy of the City's deed, or other evidence of the City's title to the property. The Purchaser shall pay the expense of any title search or title examination that Purchaser elects to procure. The Purchaser agrees that title to the property is satisfactory as of the date hereof.

9. LIENS AND ENCUMBRANCES. Purchaser acknowledges that the Property is subject to the following encumbrances against the property, further described in **Exhibit C**:

(a) If the City shall be in default with respect to the City's obligations under any mortgage on the property, the Purchaser may make any payments required by the terms of the mortgage, and all such payments made by the Purchaser shall be credited against the balance of the purchase price due under this Agreement.

10. NONASSIGNABLE. The Purchaser agrees not to assign this Agreement or lease the property. Any assignment of this Agreement or lease of the property by the Purchaser without prior written consent of the City shall be deemed a default and shall entitle the City to exercise the remedies provided in paragraph 7.

11. RECORDATION. Within twenty (20) days after the execution of this Agreement by the City and the Purchaser, the City shall cause a copy of this Agreement or a memorandum of this Agreement to be recorded in the Hancock County Registry of Deeds.

12. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, supersedes all prior negotiations and understandings, and may be canceled, modified, or amended only by a written instrument executed by both the City and the Purchaser.

Signed, Sealed, and Delivered in the presence of:

_____ City Councilor, Date _____

_____ City Councilor, Date _____

_____ City Councilor, Date _____

_____ City Councilor, Date _____

APPENDIX A

_____ City Councilor, Date _____

_____ City Councilor, Date _____

_____ City Councilor, Date _____

_____ City Councilor, Date _____

By placing my signature below, I agree to be legally bound by the foregoing terms and conditions and I also hereby acknowledge receipt of a copy of this contract as fully executed by all parties.

_____ Purchaser, Date _____

_____ Purchaser, Date _____

APPENDIX A

EXHIBIT A

DEED

APPENDIX A

EXHIBIT B

AMORITIZATION SCHEDULE

APPENDIX A

EXHIBIT C

ENCUMBRANCES

CHAPTER 11

USE OF STREETS

Section 101. **Definitions.** The words "street" or "street" as used in this ordinance shall be understood as including highways, avenues, courts, lanes, alleys, parks, squares, places, sidewalks, and bridges. The definitions of words and phrases contained in the Traffic Code Ordinance of the City are hereby made applicable to this and to every other ordinance of this City.

Section 102. **Assemblage.** No person or persons shall hold or address any public meeting or assemblage of people in any street without a permit to do so granted by the City Clerk and approved by the City Manager.

Section 103. **Awnings.** No owner or leasee of a building to which an awning is hereafter attached shall allow any part of said awning to be nearer than seven feet of the surface of the sidewalk or street, and the fixtures thereof shall be securely fastened and supported in such a manner as not to interfere with pedestrians.

*Section 104. **Begging.** No person shall beg in any street or public place in the City of Ellsworth.

Section 105. **Business.** No person shall in any part of a street expose any goods for sale, unless the same is especially allowed by law or ordinance, without first obtaining a written permit from the City Clerk to do so.

Section 106. **Cleaning Sidewalks.** No person in removing dust, dirt, debris, snow, ice or muck from any sidewalk or crosswalk of the City, shall project or cause to be deposited any such material upon the person or apparel of any person nearby or passing, but in all cases material shall be removed in a careful manner, and the person so engaged in removing the same shall if necessary discontinue such operation until the person passing or nearby shall have reached a safe distance.

Section 107. **Conduct.** No person shall engage in any indecent, insulting, immoral or obscene conduct; nor create a disturbance; nor make any indecent figure or write any indecent or obscene words upon any fence, sidewalk, building, or other public place in the City.

Section 108. **Encroachment.** Whenever the City Council shall ascertain that any structure encroaches upon the limits of any street, it shall forthwith issue a notice to the offending part that such structure be removed within a reasonable time as said Council shall therein specify, and in case the offending party shall not comply with said order, the City Council shall cause such structure to be removed, at the charge and expense of the persons maintaining the same, in addition to the penalty prescribed for violation of this section.

*Amended 4/26/76

Section 109. **Encumbrance**. No person shall occupy any street for the purpose of placing wood, lumber, bricks or any other material intended to be used in erecting or repairing any building on any land abutting on any of the streets or public places within the City, except in accordance with the terms of a building permit previously obtained, and any authorization thereunder by the Building Inspector. Such permit or authorization thereunder shall allot such part of the street or other public place as the Building Inspector may deem necessary and sufficient for the purpose, and so as to leave convenient room for pedestrian and vehicles to pass therein; and the part so allotted may be used for placing all materials for any such building or other purposes, and for receiving the rubbish arising therefrom; and all the rubbish arising therefrom or thereby shall be fully and entirely removed and carried away at the expense of the person so building or repairing and so occupying said street or other public place, in such time as shall be limited and expressed in such building permit or authorization thereunder. Such building permit or authorization thereunder may contain such reasonable conditions and limitations with regard to the erection and maintenance of barricades, warning signs and lights, and such other precautions as the Building Inspector may deem necessary.

*Section 110. **Encumbrance by Sales Display**. No person engaged in the sale of goods, wares, or merchandise shall deposit, pile, place or display for purposes of sale, or cause or permit to be deposited, piled, placed or displayed for the purpose of sale, any such goods, wares or merchandise upon or overhanging any sidewalk or street in front of or adjacent to his business or premises without consent of the City Council, and a written permit from the City Clerk as per Section 105 of this ordinance. **Except that the City Council may grant temporary permits to persons engaged in the sale of goods, wares, or merchandise, for sale on any sidewalk or street, in front of or adjacent to his business or premises, upon the following conditions:

- a) Said permit not to be issued for longer than 40 days, and may only be granted for those sales held during the months of July and August;
- b) City Council having found that said sale would not unduly interrupt pedestrians or motor vehicular traffic; and
- c) Provided that said sale would not cause a risk of harm to persons using said streets or sidewalks.

Section 111. **Excavations**. No person shall break or dig up the ground in or near any street or public place in this City, without a permit from the City Clerk.

Section 112. **Games**. No person shall, within the limits of any street in the City, play at any game of ball, amusement or exercise, interfering with the convenient

and free use of such street by persons or vehicles traveling thereon, except such street as may be designated as a "play street" by the City Manager, and then only for the period definitely so designated.

*Amended 4/26/76

**Added 5/17/76

Section 113. **Loitering**. No person shall loiter in any street or public place, or in the doorway of any store, after being ordered to move on by a police officer.

Section 114. **Missiles**. No person shall throw any missiles in or across any street or public place.

Section 115. **Noise**. No person shall without a permit from the City Clerk, approved by the City Manager, use any device to amplify sound for commercial profit advertising purposes, either stationary or by means of conveyance, upon any street or public place in the City.

Section 116. **Notices**. No person shall deface or tear down any public notice, ordinance or advertisement posted in a street or public place by any public official in the performance of his duties.

Section 117. **Paint on Sidewalks**. No person shall paint or cause to be painted any sign, advertising, or any other matter upon the public sidewalks, or apply paint thereto for any purpose in any manner, except such paint as may be applied under the direction of a public official or employee for public purposes.

Section 118. **Projections**. No person shall make or maintain any door-step, platform, portico or porch, or any entrance to any passage way to any cellar or basement, or any other structure projecting into or upon any street or sidewalk.

*Section 119. **Signs**. No person shall injure, damage, deface, break, take down, or remove or in any manner interfere with any street sign placed in a street under authority of the City Council or City Manager except a public official or employee for repair or replacement purposes.

Section 120. **Signs of Warning**. No person shall damage, interfere or meddle with, throw down, destroy or carry away from any street or public place, any lamp, lantern flare or other light, barricade or danger signal, erected and placed therein for the purpose of guarding or enclosing unsafe or dangerous places, or giving warning or notice thereof.

*Section 121. **Obstructions on Traveled Roadway**. No person shall place, deposit or cause to be deposited any rocks, stones, snow, ice or other obstructions

upon any street or roadway in any manner so as to obstruct traffic or use of said street or roadway.

Section 122. **Sidewalks.** No owner of any building, lot or premises shall allow rain water or drain water to drain from such buildings, lot or premises onto a sidewalk, or to allow ditches, leaders, ducts, or drainpipes to empty on a sidewalk.

*Amended 4/26/76

Section 123. **Emergency Rule by Police Officer. Whenever a police officer shall deem it advisable, during a fire or at the time of any accident, special emergency or for public safety and convenience may temporarily close any way or part thereof to vehicular traffic, or to vehicles of a certain description, or to divert the traffic thereof, or to divert or break a course of pedestrian traffic.

Section 124. **Emergency Rule by City Manager or Highway Foreman. Whenever the City Manager or Highway Foreman shall deem it advisable, during a fire, at the time of any roadway construction, special emergency or for public safety and convenience may temporarily close any way or part thereof to vehicular traffic, or to vehicles of a certain description, or to divert the traffic thereof, or to divert or break a course of pedestrian traffic.

Section 125. **Penalty.** Any person who shall be guilty of a violation of any provision of this ordinance shall be subject to a penalty of not less than \$10 nor more than \$100 for each and every offense. The imposition of a penalty for violation of this ordinance shall not excuse the violation or permit it to continue; such violation shall be remedied within a reasonable time, or within such time limit as may be specified in any notice given to the owner or occupant of the premises by the City Manager, and each day such violation continues to exist following the expiration of the time limit specified in any such notice shall constitute a separate offense.

**Added 4/26/76

CHAPTER 12

CLOSING OF WAYS

Section 101. **Purpose.** The following sections are enacted under the authority vested in the City Council by Chapter 84, Section 126 of the Revised Statutes of Maine (1944), to prevent the abuse of highways by motor and horse drawn vehicles during certain seasons of the year.

Section 102. **Posting.** When in the judgment of the City Manager or Road Commissioner, it becomes necessary to limit the use of public ways, said roads shall be posted as closed to all vehicles with a gross vehicle weight in excess of 23,000 pounds.

Section 103. **Notice.** The notice of such closing shall be by means of advertising such action in the "**Ellsworth American**", and at the beginning of each section of road or way affected. Such notice shall state the weight limit allowed, the date of closing, and the penalties for violation of the ordinance.

Section 104. **Exemptions.** The following vehicles are exempt from the requirements of

Chapter 12:

- a. Any vehicle registered for more than 23,000 pounds traveling without a load, other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment.
- b. City of Ellsworth highway maintenance or vehicles under the direction of the City of Ellsworth engaged in emergency maintenance of public roads or appurtenances thereto.
- c. School buses, emergency vehicles solid waste collection vehicles and vehicles with three axles or less under the direction of a public utility and engaged in plant maintenance or repair.
- d. Service vehicles such as home heating fuel delivery trucks, medical gases trucks, and postal delivery trucks.
- e. Any vehicle operating with a valid special permit to travel over posted roads. Special permit exemptions may be obtained and are on file at the City Hall, Ellsworth Me 04605. The fee for a special permit shall be \$10/day.

Section 105. **Penalties.** Any person found guilty of violating any of the regulations concerning the posted road or way is liable to a fine of not more than

\$100 for each offense, and in addition thereto shall be liable for all damages to the highway occasioned thereby.

Amended April 17, 1995

Back to [Ordinances](#)

CHAPTER 13

OFFICE OF CODE ENFORCEMENT

WHEREAS, the General Code of Ordinances of the City of Ellsworth as heretofore adopted and amended by the City Council from time to time, either contain provisions for enforcement by designated city officials or do not expressly state by whom said ordinances are to be enforced; and

WHEREAS, the City Council believes that the enforcement of all city ordinances should be entrusted to a single city department; and

WHEREAS, the Charter of the City of Ellsworth provides that the Council may establish city departments, offices or agencies which are not expressly created by the Charter;

NOW THEREFORE BE IT RESOLVED, that the City Council acting pursuant to Article V, Part 1., Section 5.01(a) of the Charter of the City of Ellsworth, does hereby establish the office of Code Enforcement Officer consisting of a Code Enforcement Officer and Deputy Code Enforcement Officers for the purpose of enforcing all ordinances enacted by the City of Ellsworth heretofore or hereafter, except those ordinances which are expressly to be enforced by the Police Department or the enforcement of which is expressly given to some other officer or agency by the Statutes of Maine.

The Deputy Code Enforcement Officers shall have all the powers and duties of the Code Enforcement Officer but is subject to the direction and control of the Code Enforcement Officer.

The Code Enforcement Officer and Deputy Code Enforcement Officers shall be appointed annually by the City Manager and shall serve in said offices at the will and pleasure of the City Manager.

Compensation for said officers shall be determined by the City Council from time to time.

Any provision of any ordinance heretofore adopted with respect to the enforcement of same and which is contrary to the provisions set forth above, is hereby repealed.

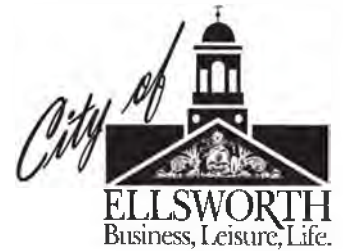
Voted 3/22/85

City of Ellsworth
Chapter 14

Licenses and Permits

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted 10/21/1996
Amended 01/27/1997
Amended 02/24/1997
Amended 03/17/1997
Amended 07/21/1997
Amended 08/18/1997
Amended 11/16/1998
Repealed 08/20/2007

New Ordinance Adopted 08/20/2007
Effective 09/01/2007

Amended 06/16/2008
Amended 08/17/2009
Amended 12/13/2010
Amended 10/17/2011
Amended 04/16/2012 effective 06/16/2012
Amended 09/15/2014
Amended 05/16/2016

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CHAPTER 14 LICENSES AND PERMITS

ARTICLE I

DEFINITIONS

Except as specifically defined herein, all words in this ordinance shall carry their customary dictionary meanings. For the purpose of this ordinance, certain words or terms used herein are to be construed or defined as follows:

Act Upon: To go through the process of deciding whether the application has met the criteria to be approved.

Alcoholic Beverage: All liquors, including but not limited to wine, beer, and spirits.

Amusement: Live music, dancing, entertainment, exhibition, performances, shows, diversions. (No adult activity, see Ordinance 46 "Paid Sexual Contact".)

Amusement (Special): Live music, dancing, entertainment, exhibition, performances, and shows, diversions that include the offering of alcoholic beverages. (No adult activity, see Ordinance 46 "Paid Sexual Contact".)

Arcade: Building or area containing pinball, video, and bagatelle games, including pool and billiards.

Automobile Graveyard: Refer to "Junkyard".

Bagatelle: Coin operated device involving the rolling of balls into scoring areas - refer to "Arcade".

Bed and Breakfast: Refer to "Lodging House".

Boarding Home: Refer to "Lodging House".

Bottle Club: Building or portion thereof where amusement is allowed and a fee is charged. Beverages and/or food may be consumed on premises with associated licenses.

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

Business: Any trade, calling, profession, or occupation, which regularly provides goods and/or services within the corporate limits of the City of Ellsworth.

Cardholder, Qualified Patient (medical marijuana): Cardholder means a registered patient or a registered primary caregiver who has been issued and possesses a valid registry identification card.

Cardholder, Qualified Employee (medical marijuana): Cardholder means a principal officer, board member or employee of a dispensary who has been issued and possesses a valid registry identification card.

Class A Establishment: Designated as an establishment requiring Amusement, Lodging House, Liquor and Victualer's License.

Class B Establishment: Designated as an establishment requiring a combination of three of the following licenses: Amusement, Lodging House, Liquor and Victualer's. Combinations may include:

1. Lodging House, Liquor, Victualer's
2. Lodging House, Liquor, Amusement
3. Lodging House, Victualer's, Amusement
4. Victualer's, Liquor, Amusement

Class C. Establishment: Designated as an establishment requiring a combination of two of the following licenses: Amusement, Lodging House, Liquor, and Victualer's. Combinations may include:

1. Amusement and Victualer's
2. Amusement and Liquor
3. Lodging House and Victualer's
4. Lodging House and Liquor
5. Amusement and Lodging
6. Liquor and Victualer

Closing-Out Sales: This licensing procedure governs any sale which states either directly or by implication that the intent of the seller is to dispose of the entire stock of goods with a view to permanently terminate further business after that disposal is complete.

Conditions of Record: For the purpose of this Chapter, this term shall mean any formal written complaint or written violation.

¹Consumer Fireworks:

"Consumer Fireworks" as defined in, Sec. 1. 8 MRSA §221-A, sub-§1-A has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47.

"Consumer Fireworks" does not include the following products as defined by the State Fire Marshal by rule:

A. Missile-type rockets:

A device similar to a skyrocket in size, composition, and effect that uses fins rather than a stick for guidance and stability. Missiles shall not contain more than 20 grams of total chemical composition.

B. Helicopters and aerial spinners:

A tube containing more than 20 grams of chemical composition, with a propeller blade attached. Upon ignition, the rapidly spinning device rises into the air. A visible or audible effect may be produced at or near the height of flight.

C. Sky rockets and bottle rockets:

Cylindrical tube containing not more than 20 grams of chemical composition, as prescribed under section 3.7 and Table 4.3-1 of the *American Pyrotechnics Association* Standard 87-1 with a wooden stick attached for guidance and stability. Rockets rise into the air upon ignition. A burst of color and/or sound may be produced at or near the height of flight.

¹ Added 4/16/2012 effective 6/16/2012

Dance Hall: Building or portion thereof where dancing is allowed. The term shall also include public or private parking lots, streets, or area(s) set aside for dancing - refer to "Amusement and Amusement (Special)".

Dispensary: A Registered Dispensary or Dispensary means a not-for-profit entity registered pursuant to 10-144 CMR Chapter 122 Section 6 consisting of a Medical Marijuana Cultivation Facility, a Medical Marijuana Retail Facility, or a Medical Marijuana Combined Facility (Medical Marijuana Cultivation Facility and a Medical Marijuana Retail Facility as defined:

1. **Medical Marijuana Cultivation Facility (Cultivation Facility):** A not-for-profit facility limited to the acquisition and possession of medical marijuana; cultivation or growing of medical marijuana; manufacturing of medical marijuana; delivering, transporting and transferring of medical marijuana to a Medical Marijuana Retail facility.
2. **Medical Marijuana Retail Facility (Retail Facility):** A not-for-profit facility limited to acquisition and possession of medical marijuana; the selling, supplying or dispensing of medical marijuana and of paraphernalia or related supplies and educational materials to registered patients who have designed the Medical Marijuana Retail Facility to dispense medical marijuana for their medical use and to registered primary caregivers of those patients.

Eating Establishment: Refer to "Victualer's"

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

Food Establishment (medical marijuana): A dispensary that prepares goods containing marijuana for medical use by a registered patient.

Highway Opening: Refer to "Street Opening".

Hotels: Refer to "Lodging Houses".

Innkeepers: Refer to "Lodging Houses".

Itinerant Vendors: Refer to "Transient Sellers".

²Junkyard/Automobile graveyard –

1. *Junk Yard* - a yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps and sanitary landfills.
2. *Automobile Graveyard* - A place occupied by three (3) or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two (2) vehicles or bodies, also referred to as a motor junk yard. (But excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.)

License: As used in this Chapter, this term shall also mean permit and approval from the authority having jurisdiction.

² Added 6/16/08

License Exemptions: Any organization/charity holding a Cert. (IRS 501 (c) (3)) verifying nonprofit status is exempt from the monetary requirements of this Chapter, however still subject to inspections pursuant to Article III Section 304 through 315.

Live Music: People performing live in a musical capacity.

Lodging House: Place providing sleeping accommodations with or without meals and charges a fee, including but not limited to bed and breakfast, boarding houses, hotels, inns and motels.

Lunch Wagons: Establishment selling foods of any sort for consumption on or off premises, mobile in design. Refer to "Victualer."

Mass Gathering: Outdoor events, including but not limited to, exhibitions, festivals, music concerts and fairs where more than 250 persons are reasonably expected to attend.

Marijuana: Marijuana means the leave, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, and other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Medical Use (medical marijuana): Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patients debilitating medical condition.

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

Patient (medical marijuana): Means a person whose physician has provided a written certification to the department for the patient's medical use of marijuana.

Permit: A document or certificate giving permission to operate a business.

Person: Individual, firm, partnership, joint venture, association, corporation, or any other group, organization, entity acting as a unit in the plural as well as the singular number, legal entity, including but not limited to lessee and manager.

Premises: For the purpose of this Chapter, this term shall mean any building, room, structure, mobile unit, or area wherein or whereat the activity takes place.

Public Exhibition: Refer to "Exhibitions."

Registered Patient (medical marijuana): Registered patient means a patient who has a registry identification card issued by the State of Maine.

Regularly: At least once a month.

Special Amusements: Refer to "Amusement (Special)"

Special Event: An event which:

1. Is operated in a temporary structure or in the out-of-doors.
2. Includes, but is not limited to, circuses, fairs, carnivals, festivals, religious revivals, political rallies, vehicle shows and displays, swap meets, rodeos, and similarly recognized temporary activities.
3. Does not include wedding and funeral ceremonies, elections, private yard sales, car washes (fundraising), and activities such as retail sales promotions conducted under an existing business permit that could otherwise be lawfully conducted in accordance with the provisions of the zoning restrictions in the district where such promotion takes place.

Street Opening: Method of excavation and destruction of pavement and its associated gravel surface (shoulders) within a public way. (See Unified Development Ordinance, Article 9 “Street Design and Construction Standards)

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

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

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

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

Transient Seller: Person(s) with no business office or location within the City of Ellsworth or State of Maine passing through or by the City with only a brief stay.

Vendor: Someone who promotes or exchanges goods or services for money.

Victualer’s: Provider of prepared food, of any sort, for public consumption either on or off premises for a fee.

ARTICLE II
LICENSE/ PERMIT FEE SCHEDULE

TYPE OF LICENSE	TERM OF LICENSE	FEE	AUTHORITY
AMUSEMENT	ONE YEAR	\$35.00	CLK
SPECIAL AMUSEMENT	ONE YEAR	\$35.00	CC/CLK
ARCADES	ONE YEAR (12 devices or less)	\$20.00	CLK
ARCADES	ONE YEAR (over 12 devices)	\$35.00	CLK
BUSINESS PERMIT	INDEFINITELY-OR UNTIL CHANGES OCCUR	\$10.00	CEO
CARNIVAL/CIRCUS	PER DAY	\$110.00	CM
CLASS A ESTABLISHMENT	ONE YEAR	\$100.00	CC/CLK
CLASS B ESTABLISHMENT	ONE YEAR	\$85.00	CC/CLK
CLASS C ESTABLISHMENT	ONE YEAR	\$65.00	CC/CLK
DRIVEWAYS	THIRTY DAYS	NO CITY FEE	CEO/DOT
CLOSING-OUT SALES (Required by State Law)	VALID FOR SIXTY DAYS	\$10.00	CC
CLOSING-OUT SALES (Required by State Law)	SIXTY DAY EXTENSION	\$10.00	CC
CONSUMER FIREWORKS RETAIL SALES LICENSE	ONE YEAR	\$500.00	CC
JUNKYARD/AUTOMOBILE GRAVEYARD/RECYCLING	ONE YEAR (within 100' from highway)	\$200.00	CC/CLK
JUNKYARD/AUTOMOBILE GRAVEYARD/RECYCLING	ONE YEAR (100 + from the highway)	\$55.00	CC/CLK
LIQUOR	ONE YEAR	\$35.00	CC/CLK
LODGING HOUSE	ONE YEAR	\$30.00 + \$2.00/RM	CC/CLK
MASS GATHERING	PER DAY	\$110.00	PC
MEDICAL MARIJUANA DISPENSARY	ONE YEAR	\$1000.00	CC/CLK
MOBIL VENDING UNIT	ONE YEAR	\$45.00	CC/CLK
POLE/WIRE PERMIT	ONE TIME	\$8.00/FILING FEE	CM/PW (already existing)
STREET OPENING	THIRTY DAYS	<u>Minimum fee \$25.00</u>	CM/CEO/PW
TAXICABS	ONE YEAR	\$35.00/TAXI	CLK/PC
TAXI DRIVER	ONE YEAR	\$20/DRIVER	CLK
TAXI STANDS	ONE YEAR	\$110.00/SPACE	CLK
TRANSIENT SELLER	THIRTY DAYS	\$110.00	CLK/CEO
VICTUALER'S	ONE YEAR	\$35.00	CLK
OFF-PREMISE CONSUMPTION	PER EVENT	\$35.00	CLK
BED&BREAKFAST (Less than 5 rooms)		\$35.00	CC/CLK
WRECKER/TOWING SERV.	ONE YEAR	\$110.00	PC/CLK

KEY:

CC = CITY COUNCIL

CM = CITY MANAGER

CEO = CODE ENFORCEMENT OFFICER

CLK = CITY CLERK

PC = POLICE CHIEF

PW = PUBLIC WORKS

ARTICLE III
GENERAL PROVISIONS

SECTION 301. ENACTMENT AUTHORITY

This chapter is enacted pursuant to 30-A M.R.S.A. Section 3001 et seq. This chapter expressly applies to licenses and permits requiring "municipal officers" approval.

SECTION 302. LICENSING/PERMITTING AUTHORITY

The City Council and/or their designees shall be the licensing/permitting authority for the City of Ellsworth in accordance with Title 30-A M.R.S.A. Section 3001.

SECTION 303. DELEGATION OF AUTHORITY

A. As agent of the City Council, the City Clerk is hereby authorized and directed to:

1. Receive applications required by Article IV:
2. Distribute applications to appropriate department heads for their inspection(s) and written report;
3. When required, set a public hearing and place request on the next available agenda for Council action; and
4. Issue licenses.

B. As agent of the City Council, the City Highway Foreman is hereby authorized and directed to receive and act upon all applications for driveway and City-street opening permits.

C. As agent of the City Council, the Superintendent of the City Wastewater Treatment Facility is hereby authorized and directed to receive and act upon all applications for hookups to the City sewer system.

D. As agent of the City Council, the Code Enforcement Officer is hereby authorized and directed to receive and act upon all applications for Business Licenses/Permits.

SECTION 304. APPLICATION REQUIREMENTS

Any person required by this ordinance to obtain a license or permit from the City shall make application upon a form provided by the appropriate issuing authority (see attachment A) and shall state facts as may be required. Application(s) must be accompanied by the required fee (refer to Article II) and returned to the issuing authority. The issuing authority will be responsible for obtaining written approvals from applicable department heads, including but not limited to: (1) Fire Chief, (2) Police Chief, (3) Code Enforcement Officer and (4) City Treasurer before license will be issued by licensing authority. Said approvals shall be based upon criteria set forth in this Chapter.

All licenses, new and renewals, requiring public hearings shall be acted upon by the City Council. The City Clerk shall act upon all licenses, new and renewals, not requiring public hearings.

SECTION 305. ACTION CRITERIA

When required, the officials named in Section 304 shall cause inspections to be made and a written report forwarded to the licensing authority verifying that the premises to be used by the proposed activity is in compliance with the following:

A. Current Land Use Ordinance

- B. Current 101 Life Safety Code (As adopted by the State of Maine)
- C. Chapter 14 Fire Prevention Codes and Ordinances
- D. Chapter 59 Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance
- E. Current Electrical Code
- F. Current Building Code
- G. Current Plumbing and Subsurface Wastewater Disposal Rules
- H. Current Sewer/Storm Water Ordinance
- I. Current Maine State Food Code
- J. As a condition of approval, the Police and/or Fire Department may require that Police and/or Fire personnel be present before, during, or after the event, at the applicant's expense.

SECTION 306. PUBLIC NOTICE AND HEARING

A. Upon receipt of a completed application, the City Clerk shall, when required, cause notice of said application to appear for at least two (2) consecutive weeks before the date of the hearing in a weekly newspaper having general circulation in the City of Ellsworth, the cost of which shall be borne by the applicant and paid directly to the City of Ellsworth.

With NEW APPLICATIONS requiring a public hearing, the applicant must adhere to the following:

1. Applicant and/or authorized agent must be present at the public hearing;
2. Non-attendance shall cause the licensing authority to deem the application "incomplete" and no action will be taken;
3. Should Section 306.2 occur, the applicant shall have to reapply for notice and hearing as set forth in Section 304.

With RENEWAL APPLICATIONS requiring a public hearing, the applicant and/or authorized agent is not required to be present. The City Clerk will notify applicants if their appearance is required at the Public Hearing based on non-compliance with one or more of the following sections:

- B. Article III Section 304 APPLICATION REQUIREMENTS
- C. Article III Section 305 APPROVAL CRITERIA
- D. Article III Section 309 CITY COUNCIL ACTION
- E. Article IV Section 407 CONSUMER FIREWORKS RETAIL SALES LICENSE
- F. Article IV Section 410 LIQUOR LICENSE (MALT, VINOUS, SPIRITS)
- G. Article IV Section 413 MEDICAL MARIJUANA DISPENSARY

SECTION 307. TERM OF LICENSE

A. Except as otherwise provided for in this chapter or by State Law, the term of all licenses shall be for one (1) year from the date of issuance and shall run concurrently unless the license(s) is issued for a lesser period.

SECTION 308. TRANSFERABILITY OF A BUSINESS

No license or permit issued under this ordinance shall be transferable. When a business or enterprise is transferred the previous owner's license shall immediately terminate unless otherwise provided by statutes or ordinance. The new owner shall obtain a new license under the terms of this ordinance.

For the purposes of this ordinance, a new owner shall include business or enterprise formerly operated by a tenant or mortgagor, or in the case of a corporation, a new owner or a controlling interest in the corporation. In applying for a permit, a potential new owner shall be permitted to apply for a permit as an owner upon a showing of legal right, title or interest to the business or enterprise.

SECTION 309. CITY COUNCIL ACTION

Upon referral by the City Clerk of a completed application in accordance with Section 304 of this chapter, the City Council shall hold a public hearing to consider the license/permit application. In its consideration to approve or deny said request, the City Council shall determine that the applicant has:

- A. Obtained approvals in accordance with Section 305.
- B. Paid all arrearages of the City personal property taxes and solid waste fees or any other obligations owed to the City, excluding real estate taxes and water and sewer charges. Real estate taxes and water and sewer charges will be collected under Title 36 and Title 38 of the Maine Revised Statutes and the Maine Public Utilities Commission Water Laws and Rules. Other obligations may include monies as aforementioned still owed by previous owners after a transfer of business occurs. Sole Proprietors will also be responsible for outstanding balances remaining in their personal names.
- C. Is in compliance with any requirements for obtaining the license or permit pursuant to this or any other ordinance and any state or federal law.
- D. If the City Council determines the applicant and/or owner has met these requirements, it shall approve the license/permit. If the City Council determines the applicant and/or owner has not met these requirements, it shall deny the license/permit.

SECTION 310. VIOLATIONS:

Any person who operates any activity regulated under this ordinance without a license or permit or who operates a such activity after suspension or revocation of a license or permit, pursuant to this ordinance, may be assessed a penalty of one hundred dollars (\$100.00) for each day the violation continues. In the event the City brings an action for violation of this ordinance and prevails in that action, it shall be awarded its reasonable attorney's fees and costs from the establishment at issue. This section does not preclude the City from exercising any other remedy it may have for violations of this ordinance or for operation of any such activity in a manner contrary to law.

SECTION 311. DENIAL, SUSPENSION AND REVOCATION

- A. The City may deny a Permit or License if the applicant fails to comply with the requirements of this ordinance. A Permit or License issued under the provisions of this ordinance may be revoked by the Code Enforcement Officer for any of the following reasons:

1. If the licensee violates any condition or requirement of licensing under state or federal law or local ordinance.
2. If there is fraud, misrepresentation, or false statement made in the course of applying for a permit, or judicial finding of fraud, misrepresentation, or false statement made to the City in the course of operating the business;
3. If there is judicial finding that the permittee conducted business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or welfare of the public;
4. For failure to comply with terms or conditions of approval as specified in the permit application, such as but not limited to, building permit, sign permits, and development permit; or
5. For failure to abide by conditions imposed by Code Enforcement Officer, Police, and Fire Departments, in connection with a business permit involving a special event.

B. Failure of an establishment to obtain a license when deemed necessary by this ordinance shall be construed as violation and dealt with in the same manner as a denial, suspension or revocation. If an applicant or a permittee has not complied with any of the requirements listed above, or if, through a routine criminal background investigation it is discovered that an applicant or a permittee has a criminal background and that background may jeopardize the welfare and safety of the community, the City may immediately refuse to grant a permit or revoke an existing permit. The applicant or permittee shall receive notice by personal service or if personal service cannot be affected, by certified mail of the refusal or revocation.

The notice shall contain a statement of the reason(s) for the refusal or revocation. Violation, suspension or revocation shall be subject to the following procedures:

1. Upon receipt by the Code Enforcement Officer of a report from any department head or City, state or federal employee or agent charged with issuing, supervising, monitoring, inspecting or otherwise regulating any licensee, that the licensee is violating any law or ordinance respecting such license, the Code Enforcement Officer shall give notice to the licensee of the alleged violation.

The notice of violation from the Code Enforcement Officer shall be delivered to the licensee by a police officer of the City of Ellsworth or some other person authorized to serve process under the laws of the State of Maine. The notice shall state the nature of the alleged violation and the date it was allegedly observed. The violator may appeal any decision pursuant to Section 312. Appeals.

C. In the event the Code Enforcement Officer determines that a violation noted in paragraph (B.1.) has occurred, the Code Enforcement Officer shall promptly take one of the following actions:

1. Deny or revoke the license;
2. Suspend the license until the violation is corrected;
3. Order the license revoked, but suspend the revocation for a reasonable time to allow correction of the violation. If the violation is corrected during that period, the revocation shall be rescinded.

D. Any order by the Code Enforcement Officer shall be issued in writing and state the reasons therefore. In the event the Code Enforcement Officer orders the suspension or revocation of a license pursuant to Section C.1. through C.3. the licensee shall have the right to appeal the suspension or revocation pursuant to Section 312. Appeals.

E. In the event a violation reported pursuant to Section A. or B. above, the Code Enforcement Officer may immediately suspend the license by giving notice thereof to the licensee.

SECTION 312. APPEAL

A. The Board of Appeals shall hear the appeal pertaining to the Code Enforcement Officer suspending or revoking a permit/license de novo at a duly noticed meeting held within thirty (30) days of the date the appeal is filed.

B. Within thirty (30) days from the denial or revocation of a License or Permit the aggrieved party may appeal, pursuant to Article VII of the City of Ellsworth Land Use Ordinance.

SECTION 313. VALIDITY

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

SECTION 314. EXEMPTION OF FEES

Any organization operated exclusively for educational, religious, charitable public service, fraternal or other non-profit purposes, with the exception of Medical Marijuana Dispensaries, and having a permanent address within the City of Ellsworth may be exempted from the monetary provisions of this ordinance, but still subject to inspection and permit requirements pursuant to Article III Section 304 through 315.

SECTION 315. PENALTIES

Any person, including but not limited to a landowner, a landowner agent or contractor, violating any provision of this ordinance may, upon being found liable, be fined not less than one hundred dollars (\$100.00) for each day such offense continues, and the City's reasonable fees and expenses including attorneys fees. Each offense may constitute a separate offense for each day the violation occurs. Any violation of this ordinance may be deemed to be a nuisance.

ARTICLE IV

REQUIRED LICENSE/PERMIT

SECTION 401. AMUSEMENT (SPECIAL) LICENSE

No person shall operate any establishment within the City which offers and/or allows alcoholic beverages to be consumed on the premises and offers live music, dancing, live entertainment, performance or show without obtaining a license or permit in accordance with Article III Section 304 through 315 of this ordinance and Chapter 37 Special Amusement Permit Ordinance of the Ellsworth Code of Ordinances. A public hearing is required prior to action on the license or permit application or renewal.

SECTION 402. AMUSEMENT LICENSE

No person shall operate any establishment within the City, which offers live music, dancing, live entertainment, performance or show without obtaining a license or permit in accordance with Article III Section 304 through 315.

SECTION 403. ARCADE LICENSE

No person shall keep pinball machines, video games or arcade games of any sort, for public patronage in the City, without first obtaining a license in accordance with Article III Section 304 through 315.

SECTION 404. BUSINESS LICENSE

No person shall directly or indirectly conduct any business or activity or use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license or permit is required under this ordinance without a license or a permit therefore being procured and kept in effect at all times as required by this ordinance or by state statute.

SECTION 405. CARNIVAL/CIRCUS LICENSE

No person shall operate a carnival, or circus, within the City without first obtaining a license in accordance with Article III Section 304 through 315. This license must be obtained no less than twenty-four (24) hours prior to the commencement of the event.

SECTION 406. CLOSING OUT SALES (M.R.S.A 30-A § 3781 et seq.)

No person may offer for sale a stock of goods, wares or merchandise under the designation of "closing-out sale," "going out of business sale," "discontinuance of business sale," "entire stock must go," "must sell to the bare walls" or other designation which states, directly or by implication, an intent of that person to dispose of the entire stock of goods with a view to permanently terminating further business after that disposal is complete, unless the person complies with the following requirements:

A. Inventory license. Before the disposal sale begins, the person must obtain a license to conduct the sale from the City Council or their designee of the municipality in which the sale will be conducted.

1. The person must apply to the City Council or their designee for the license under oath. The application must contain a complete inventory of all items to be included in the sale and must be accompanied by the payment of a license fee set by the City Council or their designee. The applicant must affirm, in writing and under oath, to the City Council or their designee that no merchandise will be included in the stock offered for sale unless the merchandise is in or at the place of business where the sale will take place when the sale opens. Any unusual purchases and additions to the stock of goods, wares or merchandise made within 60 days before the filing of an application for a license is prima facie evidence that the purchases and additions were made in contemplation of the sale.
 - a. If the applicant has been in the same business for which the sale is being conducted for less than 2 years of continuous operation in the municipality, the applicant must also affirm, in writing and under oath, that none of the merchandise was purchased

before the sale opened for the purpose of selling and disposing of that merchandise at the sale.

2. The license is valid for 60 days from the date of issuance, unless revoked under Article III, Subsection 310-312. The validity of the license may be extended for 60 additional days if the licensee provides an affidavit to the City Council or their designee stating that all goods, wares or merchandise listed in the inventory have not been disposed of within the original 60-day period.

B. License issued; records preserved. The City Council or their designee shall immediately issue the license upon compliance with this section. The City Council or their designee shall preserve all applications for licenses and other papers filed in connection with an application as a public record in their office for 5 years. They shall endorse the dates of filing and the granting or denial of the license on those papers and shall make an abstract of any other proceedings taken in connection with the application.

C. Revocation; prior violations; suspension. The City Council or their designee shall revoke any license issued under this subchapter if the licensee is convicted of violating this section. The City Council or their designee may refuse to issue another license to any applicant who has been convicted of violating this section before the date of application. If any person convicted of any violation of this section appeals the decision or sentence of the trial court, that person's license shall be suspended while the appeal is pending in the appellate court.

SECTION 407. CONSUMER FIREWORKS RETAIL SALES LICENSE

No person shall operate any establishment or sell from any establishment Consumer Fireworks within the City of Ellsworth without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on the initial license application or renewal.

- A. The application fee for the initial license and renewal license shall be \$500.00.
- B. Applicant must be 21 years of age or older and provide proof of age with birth date and one government issued picture identification are required.
- C. A separate license is required for each location at which an applicant seeks to sell consumer fireworks.
- D. Application for a license to sell consumer fireworks within the City of Ellsworth shall be submitted with a current valid Federal license to sell consumer fireworks.

Prior to submission of an application to the State Fire Marshal's Office, the applicant must have a valid City of Ellsworth Consumer Fireworks Retail Sales License and a valid Federal license to sell consumer fireworks.

Upon receipt of the State license, the applicant shall submit a copy of the current valid license to the Fire Chief.

SECTION 408. DRIVEWAY PERMIT

A. This procedure is for City roads/sidewalks only State roads are subject to different rules through the Department of Transportation.

B. No person shall cause construction of a driveway within the City without obtaining approval, including but not limited to: (1) Code Enforcement Officer, (2) Highway Foreman and (3) City Manager.

C. Any person required to obtain a City road/sidewalk opening permit shall make application with the Code Enforcement Office. The Code Enforcement Officer, Highway Foreman and City Manager will act upon the application and notify the applicant of their decision.

SECTION 409. JUNKYARD/AUTO GRAVEYARD LICENSE

No person shall operate or allow operation of an automobile graveyard, automobile recycling, or junkyard as defined in 30-A M.R.S.A. Section 3751 et. Seq. without first obtaining a license in accordance with said statute. A public hearing is required prior to action on the license application or renewal.

SECTION 410. LIQUOR LICENSE (Malt, Vinous, Spirits)

A. No person shall operate any establishment within the City which offers/allows alcoholic beverages for sale or consumption, either on or off the premises, without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on a new license application or renewal application for establishments where alcohol is consumed on premises.

B. Applications for licenses to sell or serve alcohol may be denied on any one or more of the following grounds:

1. Noncompliance with Article III Section 305.
2. Applicant/owner has been convicted of any Class A, B or C crime.
3. There have been conditions of record regarding waste disposal, health or safety, or traffic or parking violations on or in the vicinity of the licensed premise and caused by employees or patrons.
4. There have been conditions of record caused by patrons or employees which unreasonably disturb, interfere with or affect the ability of persons or businesses residing in the vicinity of the licensed premise to use their property in a reasonable manner.
5. There have been repeated incidents of breaches of the peace, disorderly conduct, vandalism or other violations of law in the vicinity of the licensed premise and caused by patrons or employees.
6. The applicant has committed a violation of any provision under Title 28-A M.R.S.A., or State of Maine Liquor Enforcement Rules and Regulations.

C. Applications for licenses to sell or serve alcohol may be denied if the proposed use is within three hundred (300) feet of a public or private school, school dormitory, chapel or parish house; provided the exceptions within Title 28-A M.R.S.A §701, "Proximity to Schools" do not apply. The distance must be measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel, or parish house by the ordinary course of travel.

D. The Chief of Police or his designee may cause an investigation to be made of the criminal record of the principal officer(s), shareholders, members, or person(s) to be licensed.

SECTION 411. LODGING HOUSE LICENSE

No person shall operate a lodging house in the City without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to an action on the license application or renewal.

SECTION 412. MASS GATHERING

A. No person or group of persons may sponsor, promote, operate or hold any festival, exhibition, amusement show, fair, theatrical performance, music concert, parade or other activity which 250 or more people are reasonably expected to attend and in which a substantial portion of the entertainment or the people attending will be out-of-doors unless a license is first obtained from the City of Ellsworth.

B. The person or group of persons seeking a mass gathering license must file an application, in accordance with Article III Section 304 through 315, with the Police Chief no less than 45 days before the proposed commencement of the outdoor event and secure the following:

1. A corporate bond from a company authorized to do business in Maine, ensuring prompt cleaning of the grounds after the close of the outdoor event, and ensure prompt payment for all damages caused by an attendee or employee to public or private property in the vicinity resulting from or in connection with the licensed event. The surety shall be to the benefit of the City of Ellsworth and shall allow the City to draw on the funds if actions are not taken within three (3) working days after the event.
2. As a condition of approval, the Police and/or Fire Department may require that Police and/or Fire personnel be present before, during, or after the event, at the applicant's expense.
3. Demonstrate, by means of a written descriptive plan, that adequate facilities will be provided at the site of the outdoor event, in order to protect the health of the people who attend, including:
 - a. Adequate waste disposal facilities;
 - b. Adequate fire fighting equipment and personnel;
 - c. Adequate water supplies;
 - d. Adequate first aid facilities; and
 - e. Adequate communication facilities.
4. Provide notice to the appropriate City, county and state officials as named by the Police Chief.
5. File proof of authority from landowners whose property will be used in holding the outdoor event.
6. Demonstrate in a written descriptive plan that adequate parking space will be available. Permission from any property owner whose property will be used for parking must also be included.

C. Exemptions: All outdoor events, festivals, music concerts, fairs and other large gatherings sponsored and under the direct supervision of the City of Ellsworth including the School Department shall be exempt from the provisions of this ordinance. All such activities conducted as an auxiliary use to normal operation of an approved campground shall also be exempt.

SECTION 413. MEDICAL MARIJUANA DISPENSARY LICENSE

No person shall operate any medical marijuana dispensary establishment within the City of Ellsworth without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on the license application or renewal.

A. Purpose.

1. To regulate dispensaries in a manner that protects the health, safety and welfare of the residents, merchants, and customers; and
2. To assure dispensaries operate with the highest professional and ethical standards.

B. Licensing documents. The following information shall be provided to the City Clerk as part of the annual licensing process:

1. State Certificate of Registration.
2. Letter from the Ellsworth Police Chief confirming: that the security plan and the anti-diversion policy and amendments are on file and found to be acceptable; the receipt of the summary report of incidents and illegal activities for the previous year; and the semi-annual receipt of the employee lists and that the employees were found to be acceptable.
3. Letter from the Ellsworth Fire Chief confirming the receipt of the material safety data sheets and annual updates.

C. Authority to Impose Conditions on License.

The City Council shall have the authority to impose such reasonable terms and conditions on a medical marijuana license as shall be necessary to protect the public health, safety, and welfare, and to obtain compliance with requirements of this Article, other ordinances, and applicable laws.

D. Security Plan. A dispensary shall have a security plan approved by and filed with the Ellsworth Police Department. The policy shall address means of preventing a continuing pattern of offenses against the public peace; drug-related criminal conduct within the premises of the dispensary or the immediate area surrounding the dispensary; and criminal conduct directly related to or arising from the operation of the dispensary. The policy shall include, but not be limited to, the following:

1. Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device to detect unauthorized intrusions.
2. The interior must be equipped with electronic monitoring, video cameras, and panic buttons,
3. Qualified security staff may be required by the Ellsworth Police Chief.
4. The dispensary shall have a policy to consistently and systematically prevent loitering.
5. Surveillance records shall be kept for a minimum 30 days and be available to the City of Ellsworth Police upon requests.
6. A service delivery plan.

E. Incident Reporting. A dispensary shall submit to the City of Ellsworth Police Department a copy of the State of Maine incident report form on the next business day after it discovers a violation of the requirements set out in the State rules regarding the operation of a dispensary. The report must indicate the nature of the breach and the corrective actions taken by the dispensary.

- F. Illegal Activity Reporting.** Any suspected illegal activity involving the operation of a dispensary must be reported to the City of Ellsworth Police Department by the dispensary in a timely manner.
- G. Anti-diversion.** A dispensary shall have an anti-diversion policy designed to prevent diversion of medical marijuana for non-medical uses approved by and filed with the Ellsworth Police Department.
- H. Employees.** A dispensary shall semi-annually provide to the Ellsworth Police Chief a list of all employees. Staff changes shall be reported to the Ellsworth Police Chief or designee within 10 days of hiring.
- I. Chemical.** A dispensary shall maintain a material safety data sheet file with the Ellsworth Fire Department for all chemical stored or used. The list of stored chemical shall be reviewed and updated annually.
- J. Unrestricted Access.** The City of Ellsworth Code Enforcement Officer, Police Chief, Fire Chief or their designees requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access at reasonable time. Failure to cooperate with City inspectors may be grounds to revoke the dispensary's business license, as set forth in this ordinance. During inspection, the City inspectors may identify violations of this ordinance.
- K. Handling of Product.**
1. A cultivation facility shall not possess more than 6 live marijuana plants for each registered patients who have designated the dispensary to cultivate marijuana for the registered patient's medical need.
 2. In addition to the 6 live marijuana plants per registered patient, the cultivation facility shall have plants in varying stages of processing or cultivation in order to ensure that the retail facility is able to meet the needs of its registered patients.
 3. When there is a decrease in the number of patients who have designated the cultivation facility to cultivate marijuana, the cultivation facility shall have 10 business days to adjust to meet this intent of the State law.
 4. Prepared marijuana must be kept under double lock and inventoried daily by two qualified employee cardholders.
 5. Quantities of prepared marijuana must be weighted, logged in and signed out by two qualified employee cardholders.
- L. Consumption.** The consumption or inhalation of marijuana on or within the premises of a dispensary is prohibited.
- M. Medical Marijuana Food Establishment:** A dispensary must obtain a food establishment license, pursuant to 22 M.R.S.A section 2167 and section 420 Victuallers' License of this ordinance.
- N. Denial, Revocation, and Suspension of License.** Notwithstanding any other provision of this Chapter, the following procedures shall apply to the denial, revocation, or suspension of a medical marijuana license.
1. The City may deny a medical marijuana dispensary license application, or suspend or revoke a license for any of the following reasons.

- a) If the licensee violates any condition or requirement of licensing under state or federal law or local ordinance;
 - b) If there is fraud, misrepresentation, or false statement made in the course of applying for a license, or judicial finding of fraud, misrepresentation, or false statement made to the City in the course of operating the dispensary;
 - c) If there is judicial finding that the licensee conducted business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or welfare of the public;
 - d) For failure to comply with terms or conditions of approval as specified in the license application or other approvals or permits such as but not limited to, building permit, development permit, and inspections; or
 - e) For failure to abide by a license condition imposed by the City Council.
2. Prior to suspending or revoking a license, the City Manager, or the City Manager's designee, shall:
- a) Notify the licensee in writing that it is in violation of one or more City regulation with specific reference to regulation alleged to be in violation, and order compliance within ten (10) days of notification.
 - b) If the condition or conditions leading to the notice are not satisfactorily addressed, the City Manager, or the City Manager's designee, shall give the licensee at least seven (7) days' advance notice of a hearing on whether to suspend or revoke the license. The notice shall contain a statement of the reason(s) for the proposed suspension or revocation, and the time and date of the hearing. The notice shall be made by personal service, certified mail to the licensee's address of record, or by other method reasonably calculated to give actual notice.
 - c) At the hearing, the City Manager, or the City Manager's designee, shall present the information regarding the alleged violations to the City Council and the licensee shall have the opportunity to present and question all witnesses.
 - d) Following the hearing, the City Council shall vote on whether to suspend or revoke the license based on the criteria contained in subsection D(1). The Council will issue written findings and conclusions within ten (10) days of the vote to suspend or revoke the license.
 - e) A licensee may appeal the suspension or revocation of a license within thirty (30) days to Superior Court in accordance with M.R.Civ.P. 80B.

SECTION 414. MOBILE VENDING UNITS

No person shall operate any vehicle, including a lunch wagon, a fixed mobile vending unit or roaming vending unit which is used for the sale of any prepared food without first obtaining a license in accordance with Article III Section 304 through 315.

This also includes a restaurant operating for a temporary period in connection with fair, carnival, circus and public exhibition or in a seasonal capacity. Those Mobile Vending Units parked in one spot for seasonal sales, must include in such applications a date for removal of vehicle upon the close of the season.

This removal will be subject to inspection by the Code Enforcement Officer. If the date for removal is not adhered to shall constitute a violation. If it is the intent of the mobile unit to set up business in one particular location, the City will require a notarized statement of approval from the landowner.

SECTION 415. PARADE PERMIT

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit has been obtained from the Chief of Police (Chapter 27 “Parade Ordinance of the City of Ellsworth”)

SECTION 416. POLE AND WIRE PERMIT

A. No person shall install or construct utility above or below ground, along or upon City streets or roads without first obtaining a permit in accordance with 35-A M.R.S.A Section 2503.

B. Designation of Licensing Authority

The Ellsworth City Council hereby designates the City Manager as the licensing authority for the issuance of facilities located on, over, and under the surface of applicable public ways in the City of Ellsworth. All permits shall be issued in accordance with MRSA Title 35-A Section 2501-2520 or as later amended.

SECTION 417. SEWER HOOK-UP PERMIT

No person shall install or connect building sewers or discharge water or wastes into the public sewer system without first obtaining a Sewer Connection Permit in accordance with Chapter 5 "Sewer Ordinance".

SECTION 418. STREET OPENING PERMIT

No person shall grade, excavate, dig or open along or upon any City street or road without first obtaining approval in accordance with conditions stated within the application.

SECTION 419. STREETS, USE OF

A. No person engaged in the sale of goods, wares, or merchandise shall deposit, pile, place or display for purposes of sale or cause or permit to be deposited, piled, placed or displayed for the purpose of sale, any such goods, wares or merchandise upon or overhanging any sidewalk or street without obtaining a permit from the City Council in accordance with Chapter 11 "Use of Streets".

B. Parades refer to Chapter 27 (“Parade Ordinance of the City of Ellsworth”) this permit is under jurisdiction of the Ellsworth Police Department.

SECTION 420. TAXICABS, TAXI DRIVERS, AND TAXI STANDS

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

SECTION 421. TOWING LICENSE PERMIT

No person shall operate any business or vehicle intended for the transport of other vehicles for a fee within the City of Ellsworth without first obtaining a license in accordance with Article III Section 304 through 315.

SECTION 422. TRANSIENT SELLER LICENSE

A. No person shall offer for sale any merchandise or service, other than at their place of business, without first obtaining a license in accordance with Section 415.B.

Such license shall be valid and effective for a period of thirty (30) days from the date of issuance, unless revoked, and the validity of such license may be extended for an additional period of thirty (30) days if so approved by the licensing authority.

B. License approval includes but is not limited to:

1. Copy of State License issued in accordance with 30-A M.R.S.A. Section 3001 et seq. and 32 M.R.S.A. Section 468 1.
2. Approvals of Police and Fire Chiefs.
3. Statement containing: name of company, product/service, number of sellers in City, names of sellers, length of time to be in area.
4. If it is the intent of the transient seller to set up business in one particular location, the City will require a notarized statement of approval from the landowner.

C. Off premises consumption catered by a State Licensee of any organization including non-profit which provides alcohol for a fee.

D. This section shall not apply to:

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

SECTION 423. VICTUALERS'

A. No person shall operate any business intending to prepare or serve food for consumption on or off the premises without first obtaining a license in accordance with Article III Section 304 through 315.

B. Charitable, religious or fraternal organizations holding breakfasts, dinners or suppers shall be exempt from the monetary licensing requirement of this section, but still subject to inspections pursuant to Article III Section 304 through 315.

ARTICLE V

BUSINESS LICENSE/PERMITS

SECTION 501. PURPOSE

Requires the registration of all business activities and enterprises physically located within the City of Ellsworth and to provide the City with necessary information concerning the businesses within the City, including but not limited to the nature of the business operation, the number of employees,

location of business, and emergency contacts, to protect the health, welfare and safety of the City's inhabitants.

SECTION 502. PERMIT (S) REQUIRED

A. It shall be unlawful for any person to operate a business, or to conduct a special event, without complying with the regulations specified in this ordinance and obtaining a business permit from the City of Ellsworth.

B. Non Business enterprises, conducting business like activities on a regular basis are required to obtain a permit. Upon receipt of an application from "Non Business" enterprises the Code Enforcement Officer will review the application and determine if the applicant qualifies for a fee exemption.

C. It shall be unlawful for any person to operate or conduct a business or special event without first obtaining a Business Permit.

SECTION 503. GENERAL REQUIREMENTS

A. A separate permit must be obtained for each branch establishment or location where a business is conducted.

B. When more than one business is operated, transacted or practiced in the same location by the same person, then only one permit shall be required for such business.

C. When more than one business is operated, transacted, or practiced in one location by a person other than the primary person, a separate permit shall be obtained for each person conducting such business.

D. For special events, only the sponsor of the primary event shall be required to obtain business permit. The City Council, however, may require all vendors participating in the event to obtain a permit if it is deemed necessary for preserving the general safety, health, and welfare of the community.

E. This excludes fundraising activities sponsored by schools, churches, athletic groups or nonprofit organizations, which have a minimal impact on surrounding properties.

SECTION 504. ISSUANCE OF BUSINESS PERMITS

A. Upon receipt of a complete business permit application and fee; the Code Enforcement Officer will review, verify, and process the application within 10 days or the permit is automatically approved. The review by the Code Enforcement Officer will also include a review by the Police and Fire Chiefs for compliance with local regulations.

B. If the business permit is issued for a special event, the Code Enforcement Officer, Police, and Fire Chiefs or their designees shall have the right to impose conditions on the permit, including but not limited to, conditions relating to insurance, parking, health and sanitation, hours of operation, permissible noise levels, and other public safety concerns.

SECTION 505. FEES FOR THE BUSINESS PERMIT

A. Applicants applying for a business permit shall pay a one-time fee for an indefinite period of time or until changes occur. Such fee shall be due and payable before the business permit is approved.

B. Business activities that are located in the Development District may be required to pay a Development Fee based on the “Traffic Trip Generation”. The City or a designee shall calculate development Fee based on the number of vehicle “trips”.

SECTION 506. EXEMPTION OF FEES

Any organization operated exclusively for educational, religious, charitable public service, fraternal or other non-profit purposes and having a permanent address within the City of Ellsworth may be exempted from the monetary provisions of this ordinance, but still subject to inspection and permit requirements pursuant to Article III Section 304 through 315.

SECTION 507. EXHIBITION OF PERMIT

Every sponsor of a special event shall post the Business Permit required under this ordinance in a conspicuous location during all hours of the special event.

SECTION 508. LOCATIONS OF RESTRICTIONS

No permittee, hereunder, shall have any exclusive right to any location in a public street, nor shall the permittee be permitted to operate in any congested area where his operations might impede or inconvenience the public.

For the purpose of this ordinance the Police Chief, Fire Chief, Code Enforcement Officer or their designee’s shall be deemed conclusive as to whether public safety would be affected, traffic impeded, and or inconvenienced. No business activity shall be conducted in an area of the City where such business activity is prohibited by the City of Ellsworth Land Use Ordinance.

SECTION 509. PERMIT NOT TRANSFERABLE

No permit issued under the provisions of this ordinance shall be assignable or transferable to any other person.

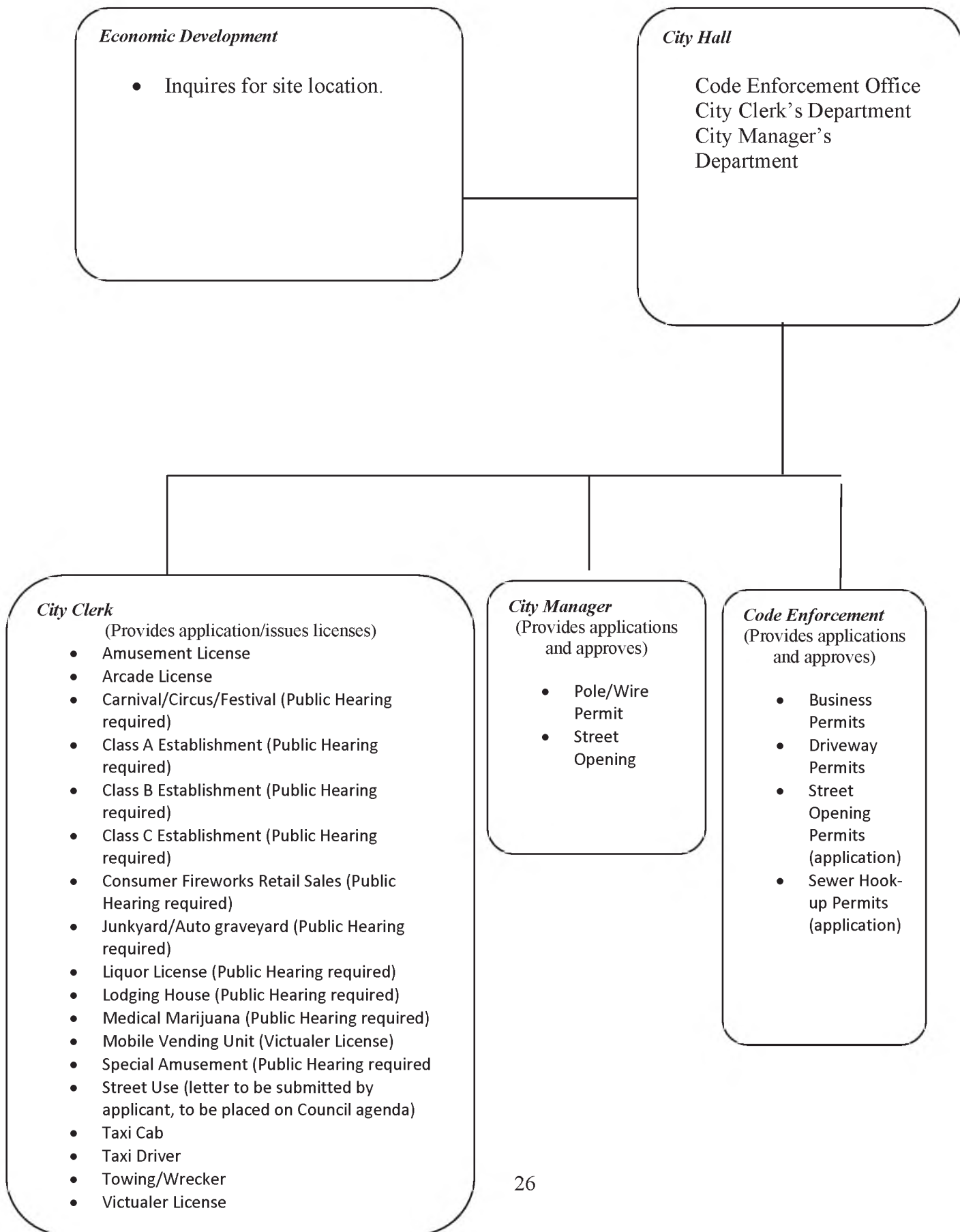
SECTION 510. CHANGE OF PLACE OF BUSINESS

No permit issued under the provisions of this ordinance shall apply to any business location other than the location designated in the permit application.

SECTION 511. ADOPTION

These regulations are effective as of September 1, 2007.

Flow Chart as it pertains to Business Licenses.



CHAPTER 15

DUMPING

Section 101. Dumping Prohibited No person, association or corporation shall dispose of refuse, rubbish or waste in any manner or any place in the City of Ellsworth other than that designated by the City Council and City Manager. The attendant at the dump site shall be the agent of the City Manager in directing the manner and place of disposal of refuse, rubbish or waste when brought to the dump site.

- * Section 101.A. Regulation of Dump Site The City Manager shall have the authority to determine the quantity of refuse, rubbish or waste to be received at the dump site at any one time. Said dump site may be temporarily closed at the direction of the City Manager if he should determine that such closing is necessary for the orderly handling of refuse, rubbish and waste. The City Manager shall have the authority to determine under what special conditions unusual large quantities of refuse, rubbish or waste shall be accepted at the dump site. What shall constitute "unusual large quantities of refuse, rubbish or waste" shall rest in the sole discretion of the City Manager.

Section 102. Dumping by Non-residents Prohibited. No person, association or corporation living or doing business outside the City of Ellsworth shall dispose of refuse, rubbish or waste at the designated dump site of the City of Ellsworth unless arrangements for payment for the privilege have been made with the City of Ellsworth.

Section 103. Manner of Transporting No person taking refuse, rubbish or waste over any street or road in the City of Ellsworth shall transport such refuse, rubbish or waste in any manner other than in tightly covered and enclosed containers so that no part of such refuse, rubbish or waste can escape into the street.

Section 104. Ownership of Material Ownership of refuse material of any kind or description deposited upon the city dump shall be vested in the City of Ellsworth.

Section 105. Dump Picking Prohibited It shall be unlawful for any person to pick or remove any refuse material from the city dump without express written permission of the City Manager.

Section 106. Penalty Any person found guilty of the violation of any provision of this ordinance is liable to a fine not to exceed one hundred (\$100) dollars for each offense.

- ** Section 107. Discharge of Firearms
 - (a) It shall be unlawful to shoot or discharge any firearm within a distance of 300 feet of any dump site so designated by the City Council and City Manager.

Chapter 15 repealed and replaced 6/21/1970

* added 8/16/71

**added 9/18/72

- (b) The provisions of this section shall not apply to law enforcement officials acting in the line of duty, or to any person acting in defense of person or property.
- (c) For the purpose of this section, firearms shall include all instruments used in the propulsion of shot, shell or bullets by the action of gun powder exploded within it, or by the action of compressed gas.

Chapter 16

Cemetery Ordinance

Section 101. Perpetual Care. Any person or persons, owning or having an interest in any burial lot or tomb, either public or private, in any cemetery within the limits of the City of Ellsworth, may have the same perpetually cared for and preserved, as well as may be, under the provisions of this ordinance.

Section 102. Interest and Expenditures. Such person or persons may pay or cause to be paid to the City Treasurer any sum not less than \$500; such sums shall be invested by the City in accordance with the requirements of the Maine State Statutes regulating investments by Savings Banks. The City shall expend annually an amount of money not to exceed actual income nor in any case less than 2½% of funds invested, in the care and adornment of such lots or tombs. The amounts to be expended shall be established from time to time by vote of the City Council. The City shall provide the Care specified herein, itself, or may do so by the payment of funds herein specified to any legally constituted cemetery association. In all cases where perpetual care of cemetery lots is provided by payment of funds to associations such payments shall be made twice a year on June 30 and December 31, for the six months immediately preceding. There may be reserved from the annual income from each lot or tomb a reasonable sum for extraordinary repairs, provided such reserve shall not conflict with the adequate general care; and provided further that it is not contemplated under this ordinance that headstones, curbing, etc. are to be entirely renewed, unless provision is specially made therefor.

Section 103. Bookkeeping. The City Treasurer, upon receipt of any payment as contemplated by this ordinance shall enter the same in a book to be kept for the purpose, giving name of the party or parties, amount paid, and designation of lot or lots, for the care of which payment is made. A transcript of this record shall also be entered by the cemetery board in the book provided to be kept by them in Section 102.

Section 104. Contract. In return for such payment the City Treasurer shall give the party or his representative a contract, which after reciting a copy of this ordinance, shall be substantially as follows:

WHEREAS, A.B. of _____ has paid to the treasurer of the City of Ellsworth _____ dollars for the care of lot or lots designated as follows _____, as provided in the above ordinance. Now, therefore, in consideration of the said payment, said city hereby agrees to expend, in accordance with the above ordinance, an amount equal to _____ dollars per annum, in the care and adornment of the designated lot or lots.

Treasurer of the City of Ellsworth

Date _____

(City Seal)

Section 105. Payment by the City. The City Treasurer shall keep in his books an account to be designated "Cemetery Account, Perpetual Care of Lots," to which he shall credit, when appropriated, the gross annual liability of the City on account of payments made under this ordinance and such annual liability shall from part of the regular annual appropriation in the same manner as interest on the City Dept. He shall pay out and charge to said account all sums required by the Cemetery Board in carrying out the provisions of this ordinance. In auditing the annual accounts of the City a comparison shall be made of the balance shown by the books for the cemetery board to the credit of all lots.

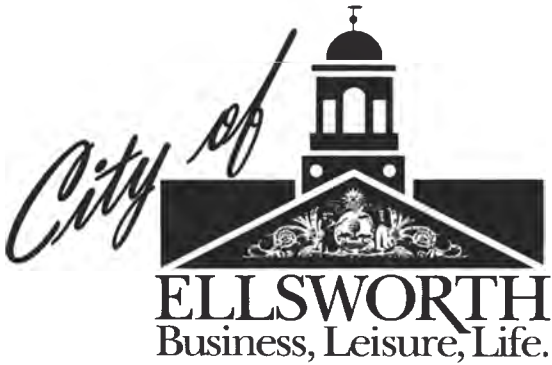
Section 106. Deposit on Investment. All sums of money paid to the City Treasurer in accordance with the provisions of this ordinance shall be either (1) deposited in the savings account of some reliable bank, or (2) invested in government bonds or other bonds in which the funds of savings bank may be legally invested in accordance with the laws of Maine.

Section 107. Repeal. All parts of any ordinances of the City of Ellsworth inconsistent with this ordinance, are hereby repealed, but this ordinance shall not be construed so to affect the handling or investing of any sums already paid to the City Treasurer for perpetual care of any lots, or which shall be so paid prior to the approval of this ordinance, nor to change the amounts to be expended annually for their care and adornment.

City of Ellsworth Ordinances
Chapter 17

City Engineer
Ordinance

This ordinance was repealed 6/17/2010.



CHAPTER 18

ELLSWORTH PLANNING BOARD

Adopted April 16, 2007
Amended June 21, 2010

1. ESTABLISHMENT

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

2. APPOINTMENT

- A. **Appointment:** Board members shall be appointed by the City Council and sworn in by the City Clerk or other person authorized to administer oaths.
- B. **Structure:** The Board shall consist of five (5) Regular members and two (2) Alternate members. The term "member(s)" as used in this ordinance shall refer to both members and alternate members unless otherwise expressly stated.
- C. **Term:** The terms of the Planning Board members shall expire in different years. The five (5) Regular Planning Board members shall have a 5-year term with one (1) seat expiring every year. The two (2) Alternate Planning Board members shall have a 2-year term with one (1) seat expiring every year. Individuals appointed to fill unfinished terms will serve for the remaining time of the respective terms.
- D. **Vacancy:** Where there is a permanent vacancy the municipal officers shall, in a timely manner, appoint a person to serve the unexpired term. A vacancy shall occur upon the resignation or death of any member, when a member ceases to be a legal resident of the city (defined as eligible to vote in City elections) or when a member fails to attend four consecutive meetings or fails to attend at least 75 % of all meetings during the preceding twelve (12) month period. When a vacancy occurs, the chairperson of the Board shall immediately so advise the municipal officers in writing. The Board may recommend to the municipal officers that the attendance provision be waived for cause, in which case no vacancy will then exist until the municipal officers disapprove the recommendation of the Board. The municipal officers may remove members of the Board by a two-thirds majority vote, for cause, after notice and a hearing.

3. ORGANIZATION AND RULES

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

- B. **Alternates:** Alternate members shall attend all meetings of the Board and participate in its proceedings, but may vote only when there are fewer than five (5) voting regular members present. Alternate members shall be designated by the chairperson to participate and vote when a member is unable to act because of a conflict of interest, physical incapacity, absence or any other reason satisfactory to the chairperson.
- C. **Disqualification:** Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority of the members of the Board present.
- D. **Meetings:** The chairperson or designee shall call at least one regular meeting of the Board each month. The chairperson or designee may also call a special meeting. The Board or designee may impose a fee upon an applicant to cover extra advertising costs to the city for a special meeting requested for the convenience of the applicant.
- E. **Quorum:** No meeting of the Board shall be held without a quorum consisting of at least four (4) members authorized to vote. The Board shall act by majority vote, calculated on the basis of the number of members present and voting. The lack of quorum for any agenda item shall not render the Board incapable of acting on that item at any meeting where there is a quorum present to hold that meeting. A tie vote by the Board shall be considered a denial of the request.
- F. **Public Notice:** The secretary, or designee, shall cause to be published, a notice for public hearings in a newspaper of general circulation in Ellsworth in accordance with the rules put forth in the Ellsworth Land Use/Subdivision Ordinances.
- G. **Public Record:** The secretary, or designee, shall keep a record of its resolutions, transactions, correspondence, findings and determinations.
- H. **Rules of Order:** The Board shall conduct business according to Rules For The Conduct of Public Proceedings in Section 6 below. The Board shall adopt and affirm annually additional rules and procedures necessary for the transaction of its business.

4. DUTIES AND POWERS

- A. The Board shall perform such duties and exercise such powers as are provided by the Ordinances of the City of Ellsworth and the laws of the State of Maine.
- B. The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for that purpose by the City Council or as provided by applicable City ordinances.

5. APPEALS

- A. An aggrieved party may appeal any Planning Board final decision made pursuant to the Ellsworth Land Use Ordinance to the City of Ellsworth Board of Appeals.
- B. An aggrieved party may appeal any Planning Board final decision made pursuant to the Ellsworth Subdivision Ordinance to the State of Maine Superior Court pursuant to the rules of that Court.

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

6. RULES FOR THE CONDUCT OF PUBLIC PROCEEDINGS

- A. **SCOPE OF RULES:** These rules govern the practice and conduct of Public Proceedings (including official meetings and hearings) held by the Planning Board of the City of Ellsworth hereinafter referred to as the “Planning Board.” These rules shall be liberally construed so as to enable the Planning Board to accomplish its duties and responsibilities.
- B. **PRESIDING OFFICER:** The Presiding Officer at all public proceedings shall either be the Chairman or Vice-Chairman of the Planning Board or a member of the Planning Board who is selected by those members present at proceedings.

The Presiding Officer shall have authority to:

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

C. GENERAL RULES FOR PUBLIC PROCEEDINGS:

1. **Rules of Order:** To supplement the basic rules of order written in this Section, the Board shall adopt and affirm annually additional rules and procedures necessary for the transaction of public proceedings.
2. **Regulation of Electronic Recordings:** The placement and use of cameras or microphones for the purpose of recording Planning Board proceedings may be regulated by the Presiding Officer so as to avoid interference with the orderly conduct of the proceedings.
3. **Public Record:** The Planning Board shall make a record of proceedings by appropriate means. All documents, materials, and objects accepted into evidence during the meeting shall become part of the public record.
4. **Objections:** All objections to rulings of the Presiding Officer regarding evidence or procedure shall be timely made during the course of proceedings.
5. **Corrections:** If, after the close of proceedings and during its deliberations, the Planning Board determines that any ruling was in error, it may reopen proceedings to take such other action, as it deems appropriate to correct the error.
6. **Continuances:** All proceedings conducted pursuant to these rules may be continued for reasonable cause and reconvened from time to time and from place to place as may be

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

D. SUBMITTALS:

1. **Submittal Requirements:** Materials that are submitted during public proceedings may be accepted only if determined by the Presiding Officer to be relevant, necessary, brief enough to be quickly assimilated and copies are provided in sufficient number and of a type that is compatible with information technology currently available at City Hall.
2. **Public Record Closed:** Following the conclusion of proceedings, no further evidence or testimony will be allowed into the public record of that proceeding except as required by the Board as part of a conditional approval or a continuance.
3. **Common Knowledge:** The Planning Board may, at any time, take notice of judicially cognizable facts, generally recognized facts and physical, technical, or scientific facts within the knowledge of the Planning Board members whether or not these facts are submitted into the public record by presenters.

E. PRESENTATIONS:

1. **Introduction:** The Presiding Officer shall open the proceedings by describing in general terms the purpose of the proceedings and the general procedures governing its conduct.
2. **Speaker Instructions:** All speakers shall be required to locate at a microphone and state for the record their name and residential address. The Chairperson may ask their business or professional affiliation, the nature of their interest in the proceedings, and whom they represent.
3. **Allowable Testimony:** The Presiding Officer may refuse to permit irrelevant, immaterial, or repetitious comments or questions or other remarks which do not advance or serve the purpose of the proceedings and shall state the basis for such refusal on the record when requested to do so by the party asking the question.
4. **Time Limits for Speakers:** The Presiding Officer may impose limitations on the length of testimony and questioning.
5. **Applicant Presentation:** The applicant, and such representatives as he chooses, shall present the proposal to the Board using duly submitted plans, documentary evidence, photographs, studies, reports, analyses, and other information as well as materials otherwise submitted according to this ordinance.

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

Public Hearing Speaker Category:
1) Planning Board members
2) City staff and consultants
3) Other governmental representatives
4) Ellsworth residents and/or tax payers
5) Other interested persons

7. **Varying Order of Appearance:** When circumstances warrant, the Presiding Officer may vary the order in which speakers appear or are questioned.
8. **Questioning of Speakers:** The Presiding Officer may allow questioning of speakers by Planning Board members, staff, consultants, counsel and others at any time.
9. **Follow-up Testimony:** At the conclusion of direct testimony and questioning of each speaker or category of speaker as determined by the Presiding Officer, all persons shall have the opportunity to submit follow up testimony according to the Presentation Order provided above. The Presiding Officer shall allow as many rounds of follow-up testimony as are necessary to provide a full and impartial hearing.

7. COMPENSATION

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

8. ADOPTION

These regulations, as amended, are effective as of the date of adoption by the City Council.

CHAPTER 20
MISCELLANEOUS

Section 101. Enactment. The foregoing revised ordinance from Chapter 1 to Chapter 20 inclusive, are hereby declared to be ordained in the place of the City Ordinances heretofore existing.

Section 102. Repeal. All existing ordinances of the City of Ellsworth inconsistent with the provisions of this code are hereby repealed.

Section 103. Title. The foregoing revised ordinances from Chapter 1 to Chapter 20 inclusive shall be known and may be cited as the "Ellsworth General Code of Ordinances of 1950".

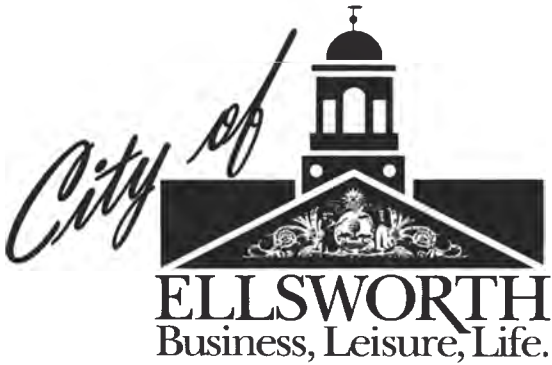
Section 104. Validity. If any portion of any ordinance shall be held to be invalid, the intent of the City Council is that such decision does not affect the validity of the remaining portions thereof.

Section 105. General Penalty. Whoever violates or fails to comply with any provision of any City Ordinance or any rules or regulations established thereunder, when no other penalty is specifically provided, shall be punished by a fine of not more than one hundred dollars, (\$100.00) (Adopted March 15, 1967).

City of Ellsworth Ordinances
Chapter 21

**Mobile Home Park and
Campground
Ordinance**

This ordinance was repealed 5/16/2011.



Chapter 22

City of Ellsworth Animal Control Ordinance

- Sec. 22-1 Definitions.**
- Sec. 22-2 Animal control officer.**
- Sec. 22-3 Penalty for violation of article**
- Sec. 22-4 Licensing.**
- Sec. 22-5 Roaming at large; leash requirements.**
- Sec. 22-6 Impoundment.**
- Sec. 22-7 Impoundment fees.**
- Sec. 22-8 Public nuisance.**
- Sec. 22-9 Disposition of dogs that have bitten persons.**
- Sec. 22-10 Rabies; quarantine**
- Sec. 22-11 Duty to dispose of feces.**
- Sec. 22-12 Fines and fees.**

State law reference 7 M.R.S.A. SS 1

Previous Chapter 22 to be replaced and repealed with this version per Council Meeting 4/18/2005.

Sec. 22-1. Definitions

As used in this Ordinance, unless the context indicates otherwise:

“**Animal**” shall be intended to mean any living, sentient creature that is not a human being.

“**Public or City-Owned Property**” includes, but is not limited to, streets, sidewalks, parking lots, lawns and grounds of public buildings, parks, athletic fields and facilities, trails, walkways, public rights-of-way or easements and driveways.

“**Dog**” shall be intended to mean both males and females.

“**Keeper**” shall be intended to mean a person in possession or control of a dog or other animal.

“**Owner**” shall be intended to mean any person or persons, firm, association, or corporation owning, keeping or harboring a dog or animal.

“**At large**” means off the premises of the owner and not under the control of any person by means of personal presence and attention as will reasonably control the conduct of such dog.

Sec 22-2 Animal Control Officer

The City Council shall appoint one or more animal control officers in accordance with Title 7, M.R.S.A., Section 3947, as amended. Said animal control officers shall have all of the powers provided under this Ordinance and the laws of the State of Maine.

In addition to the regular duties of animal control officers delineated by the state law and this Ordinance, the animal control officer is hereby authorized to enforce the provisions of any other law regarding animals and found in Title 7, Maine Revised Statutes,

Chapter 719 Uncontrolled Dogs

Chapter 720 Rabies Prevention

Chapter 721 Dog Licenses

Chapter 723 Licenses for Kennels, Boarding Kennels, and Pet Shops

Chapter 727 Dangerous Dogs

Previous Chapter 22 to be replaced and repealed with this version per Council Meeting 4/18/2005.

- Chapter 729 Damage by Dogs
- Chapter 730 Ferrets
- Chapter 731 Mistreatment of Animals
- Chapter 733 Transportation of Animals
- Chapter 737 Calf and Pig Scrambles
- Chapter 741 Animal Trespass
- Title 17 Crimes 1011 through 1046

Sec. 22-3 Penalty for violation of article.

Whoever keeps a dog contrary to the provisions of this article shall be punished in accordance with section 22-12 of this article and Title 7 M.R.S.A.

Sec. 22-4 Licensing.

A suitable tag showing the year the dog license was issued in accordance with the state statutes and bearing such other data as the commissioner of agriculture may prescribe shall be securely attached to a collar which must be worn at all times by the dog for which the license was issued. It shall be unlawful for any person to remove such tag or to place either a collar or tag on any dog not described or for which the license was not issued.

Sec. 22-5 Roaming at large; leash requirements.

- (a) It shall be unlawful for the owner or keeper of any dog, whether licensed or unlicensed, to permit such dog to run at large, except when used for hunting.
- (b) Any dog shall be controlled by a leash of not more than eight feet in length in the following areas within the City of Ellsworth:
 - (1) All properties, public ways, and sidewalks located within the commercial district and downtown.
 - (2) All school and library properties.

Previous Chapter 22 to be replaced and repealed with this version per Council Meeting 4/18/2005.

Sec. 22-6 Impoundment

(a) Unlicensed dogs, or dogs found roaming at large, shall be taken up and impounded in a shelter designated by the city, and there confined in a humane manner for a period of not more than ten days. Any animal impounded under the provisions of this article and not reclaimed by its owner within ten day may be humanely destroyed or placed in the custody of another person deemed to be a responsible and suitable owner, who will agree to comply with the provisions of this article.

(b) The city or its duly authorized agent may transfer title of all animals held by it at an animal shelter after the legal detention period has expired and the animal has not been claimed by its owner.

(c) When dogs are found running at large and their ownership is known, such dogs need not be impounded, but the city through its duly authorized agents may, at its discretion, cite the owners of such dogs to appear in court to answer violations of this article.

(d) The owner shall be entitled to resume possession of any impounded dog upon compliance with the license provisions of section 22-4 and the payment of impoundment fees as set forth in this article. Any other animal impounded under the provisions of this article may be reclaimed by the owner upon payment of the impoundment fees as set forth in this article.

Sec. 22-7 Impoundment fees.

Any animal impounded under this article may be reclaimed as provided in this article upon payment by the owner of the currently required impoundment fees, as described in 22-12

Sec. 22-8 Public nuisance.

(a) Any owner or keeper of a dog or animal that damages property located within the City of Ellsworth and belonging to another, said damage occurring while the dog or animal is not on the property of the owner or keeper commits a civil violation subject to the penalties set forth in this ordinance.

(b) No owner or keeper of a dog or animal shall allow the dog or animal to unnecessarily annoy or disturb any person by loud and repeated barking or other noises. Upon written complaint of the person disturbed, signed and sworn to, any animal control officer or other law enforcement officer may investigate the allegations of the complaint. If the agent or officer finds that there are valid grounds for the complaint, the agent or officer shall serve a written warning upon the owner or keeper, notifying the owner or

Previous Chapter 22 to be replaced and repealed with this version per Council Meeting 4/18/2005.

keeper that such annoyance or disturbance must cease. Warning shall be served by delivering a copy of the warning to the owner or keeper, in hand, by leaving a copy with a person of suitable age and discretion at the premises where the dog is kept or where the owner or keeper resides; or by mailing a copy to the owner or keeper at the address shown on the license application for that dog or animal. Any owner or keeper who allows such annoyance or disturbance to continue after notice has been served commits a violation subject to the penalties set forth in this ordinance.

Sec. 22-9 Disposition of dogs that have bitten persons.

(a) It shall be unlawful for the owner or keeper, when notified that such dog has bitten any person or has so injured any persons as to cause abrasion of the skin, to sell or give away such dog or permit or allow such dog to be taken beyond the city limits, except under the care of a licensed veterinarian. It shall be the duty of such owner or keeper, upon receiving notice of the character aforesaid, to immediately place such dog under confinement for a period of at least fourteen days, or deliver such dog to the police department to be quarantined at the owners expense at a location of the departments choosing. The city police department shall be notified immediately upon the death of any dog while under confinement.

(b) Any dog which has been bitten by another dog having or suspected of having rabies shall be immediately impounded for observation as provided in this section.

Sec. 22-10 Rabies quarantine

(a) Upon positive diagnosis of rabies in any dog within the city, the health officer may proclaim and invoke a citywide quarantine for a period of thirty days, and upon invoking of such quarantine, no animal shall be taken into the streets, or permitted to be in the streets, during such period of quarantine.

(b) During a period of rabies quarantine as described in this section, every animal bitten by an animal adjudged to be rabid shall be forthwith destroyed or, at the owners expense and option, shall be treated for rabies infection by a licensed veterinarian, or held thirty days under quarantine by the owner in the same manner as other animals are quarantined.

(c) In the event there are additional positive cases of rabies occurring during a period of quarantine, such period of quarantine may be extended by the health officer for a period of six months.

(d) The carcass of any dead animal exposed to rabies shall upon demand be surrendered to the health officer.

(e) The health officer shall direct the disposition of any animal found to be infected with rabies.

(f) No person shall fail or refuse to surrender any animal for quarantine or destruction as required in this section when demand is made therefore by the health or animal control officer.

Sec. 22-11 Duty to dispose of feces.

It shall be a violation of this section for any person who owns, possesses, or controls a dog to fail to immediately remove and dispose of any feces left by his or her dog on any street, sidewalk, or publicly or privately owned property of another.

This section will not apply to a dog accompanying any handicapped person, who, by reason of his/her handicap, is physically unable to comply with the requirements of this section.

Sec. 22-12 Fines and fees.

Any person who violates any provision of this ordinance commits a civil violation. The penalty for this violation is a fine of not less than fifty dollars (\$50.00) or more than two hundred fifty dollars (\$250.00) per violation. Each day that a violation continues constitutes a separate violation. If the city is a prevailing party in an action to enforce any provision of this ordinance, it must be awarded its reasonable attorney's fees, expert witness fees, and costs, unless extraordinary circumstances make the award of these fees unjust.

The owner of any impounded animal in the City of Ellsworth shall pay a twenty-five dollar (\$25.00) impound fee to the Police Department before being allowed to take possession of said animal from its place of confinement. A receipt will be given to the owner or keeper to show proof of payment in order to retrieve their animal. This fee is in addition to fees accumulated at the animal's place of confinement.

Chapter 23 - Noise

§ 1 - Findings and Purpose

The Ellsworth City Council finds that controlling excessive noise as provided herein is necessary to promote the health, welfare, and safety of the citizens of the City of Ellsworth. It is the purpose of this Chapter to prevent any person from making, continuing, or causing noise that unreasonably interferes with the comfort, health, or safety of others within the City of Ellsworth.

§ 2 - Prohibition

- A. It shall be unlawful for any person in a public place to intentionally or recklessly cause annoyance to others by intentionally making loud and unreasonable noises after having been ordered by a law enforcement officer to cease the noise or similar such noises within the last six months.
- B. It shall be unlawful for any person in a private place to make loud and unreasonable noise after having been ordered by a law enforcement officer to cease the noise or similar such noise within the last six months that can be heard by another person who is in a public place or in another private place.
- C. For the purposes of this section, the term “noise” shall include, but is not limited to:
 - i. sound created by radios or other electronic or mechanical devices capable of amplifying or projecting ambient noise, including such devices operated within motor vehicles;
 - ii. sound created in connection with loading and unloading commercial vehicles between the hours of 10:00 p.m. and 6:00 a.m.;
 - iii. sound created from construction activities between the hours of 10:00 p.m. and 6:00 a.m.;
 - iv. sound created from timber harvesting activities between the hours of 10:00 p.m. and 6:00 a.m.; and
 - v. sound created by recreational vehicles, including all-terrain vehicles, snowmobiles, motorbikes, watercraft, and other such vehicles between the hours of 10:00 p.m. and 6:00 a.m.

§ 3 - Exceptions

The following are exempt from the provisions of § 2:

- A. Federal, state, and local governmental activities, whether conducted by the governmental agency or by a private contractor acting on the government agency’s behalf, including, but not limited to, activities of police, fire, rescue, and public works;
- B. Activities of utility agencies, including, but not limited to, vehicles and activities for the provision of water, electricity, telephone service, and sewer service; and
- C. Public assemblies, parades, performances or athletic events held between the hours of 8:00 a.m. and 10:00 p.m.

§ 4 - Violations & Penalties

- A. Any member of the Ellsworth Police Department is authorized to enforce this Chapter upon complaint or upon the officer's own observation of a violation in progress.
- B. A person who is a registered owner of a vehicle at the time that vehicle is involved in a violation of this chapter commits a civil violation. The owner of a business which is involved in a violation of this chapter commits a civil violation.
- C. Any person who violates this Chapter shall, upon conviction, be fined a civil penalty of not less than \$50 and not more than \$250 for each separate violation. If the City is the prevailing party to an enforcement action, it shall be entitled to attorney's fees and costs unless extraordinary circumstances make such an award unjust.

§ 5 - Definitions

As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

- A. "Public place" means a place to which the public at large or a substantial group has access, including but not limited to:
 - i. Public ways; public way means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, way upon which the public has a right of access or has access as invitees or licensees, or way under the control of park commissioners or a body having like powers;
 - ii. Schools and government-owned custodial facilities; and
 - iii. The lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals.
- B. "Private place" means any place that is not a public place.

Adopted: 01-12-2009

CHAPTER 24
Regulation of Handbills

Section 1. Definitions. The following words, terms and phrases, when used in this ordinance, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. "Commercial Handbill" shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature:

(1) Which advertises for sale any merchandise, product, commodity, or thing; or

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales; or

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event or any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event or any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; Provided, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where such license is or may be required by any law of this State, or under any ordinance of this City; or

(4) Which, while containing reading matter other than advertising matter, is predominately and essentially an advertisement, but is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor; or

B. "Non-commercial Handbill" shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the aforesaid definitions of a commercial handbill.

C. "Person" shall mean and include any person, firm, partnership, association, corporation, company or organization of any kind.

D. "Private Premises" shall mean and include any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

E. "Public Place" shall mean and include any and all streets, boulevards, avenues, lanes, alleys, or other public ways, and any and all public parks, squares, spaces, plazas, grounds and buildings.

F. Words singular in form may include the plural; any words plural in form may include the singular; and words in the masculine gender shall include the feminine and neuter genders.

Section 2. Posting Notice, Placard, Bill, etc. Prohibited in Certain Cases. No person shall post, stick, paint or otherwise fix or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other paper or device calculated to attract the attention of the public, to or upon any sidewalk, crosswalk, curb or curbstone, flagstone, or any other portion or part of any public way or public place, or any lamp post, electric light, telegraph, telephone pole, or railway structure, hydrant, shade tree or upon the piers, columns, trusses, girders, railings, gates or other parts of any public bridge or viaduct, or other public structure or building, or upon any pole, box or fixture or the fire alarm or police telegraph system, except such as may be authorized or required by the laws of the United States, or State, and the ordinances of the City.

Section 3. Throwing Handbills Broadcast in Public Places Prohibited. It shall be unlawful for any person to deposit, place, throw, scatter or cast any commercial handbill in or upon any public place within this City; and it shall also be unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; Provided, however, that it shall not be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any non-commercial handbill in any public place to any person willing to accept such non-commercial handbill.

Section 4. Placing in Vehicles - Commercial and Noncommercial Handbills. It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or non-commercial handbill in or upon any automobile or other vehicle. The provisions of this section shall not be deemed to prohibit the handling, transmitting or distributing of any non-commercial handbill to the owner or other occupant of any automobile or other vehicle, who is willing to accept the same.

Section 5. Distribution on Uninhabited or Vacant Private Premises of Commercial or Non-Commercial Handbills. It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or non-commercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

Section 6. Prohibiting Distribution Where Properly Posted. It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or non-commercial handbill upon any premises, if requested by anyone thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Trespassing"; "No Peddlers or Agents"; "No Advertisement"; or any similar notice, indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon such premises.

Section 7. Distribution on Inhabited Private Premises - Commercial or Non-Commercial Handbills. No person shall distribute, deposit, place, throw, scatter or cast any commercial or non-commercial handbill in or upon any private premises which are inhabited, except by handling or transmitting any such handbill directly to the owner, occupant, or any other person then present in or upon such private premises.

Section 8. Name and Address of Printer, etc., and Distributor of Handbills. It shall be unlawful for any person to distribute, deposit, scatter, hand out or circulate any commercial or non-commercial handbill in any place, under any circumstances, which does not have printed on the cover, front or back thereof, the name and address of the following:

(a) The person who printed, wrote, compiled or manufactured the same.

(b) The person who caused the same to be distributed; Provided however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said handbill shall also appear thereon.

Section 9. Exemptions. The provisions of this ordinance shall not be deemed to apply to the distribution of mail by the United States, to newspapers of general circulation, nor to any periodical or current magazine regularly published and sold to the public.

Section 10. Penalty. Any person who violates any provision of this ordinance shall, upon conviction, be punished by a fine of not more than \$100.00.

CHAPTER 25

DISCHARGE OF FIREARMS

Section 1. It shall be unlawful to shoot or discharge any firearm within a distance of 300 yards of any dwelling house within the urban limits of the City of Ellsworth except by owner or resident or persons authorized by owner or resident.

Section 2. The provisions of this Chapter shall not apply as follows:

- (1) Law enforcement officials acting in the line of duty;
- (2) Any person acting in defense of person or property;
- (3) Indoor target ranges.

Section 3. For the purpose of this Chapter, firearms shall include all instruments used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it.

Section 4. Urban limits shall be that area designated as Urban Compact by the State Highway Commission.

Section 5. Any person who violates any provisions of this Chapter shall be punished by a fine of not more than \$100.

Voted October 15, 1969

CHAPTER 26

PLUMBING AND SEPTIC SYSTEM PERMIT FEES -

Section 1 -- Applicability

Section 2 -- Plumbing Permit Fees

Section 3 -- Subsurface Waste Water Disposal System Fees

Section 1 -- Applicability

This Chapter applies to fees charged by the City of Ellsworth for plumbing and subsurface wastewater disposal system permits issued by the City of Ellsworth pursuant to 30-A M.R.S.A. Section 4201 et seq. and pursuant to rules promulgated by the Department of Human Services (DHS) under the authority of 30-A M.R.S.A. Section 4201 et seq. ("State Plumbing Code"). For purposes of this Chapter, the terms contained in this Chapter shall have the meanings given to them in the State Plumbing Code.

Section 2 -- Plumbing Permit Fees

A. At the time of issuance by the City of a plumbing permit pursuant to 30-A M.R.S.A. Section 4201 ER seq. and the State Plumbing Code, the plumbing permit applicant shall pay a fee in accordance with the following schedule and at the rate provided for each classification shown herein:

1. Any person who shall begin any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor shall, if subsequently eligible to obtain a permit, pay double the permit fee fixed by this Chapter for such work. However, this provision shall not apply to emergency work when it shall be proved to the satisfaction of the local Plumbing Inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days or else a double permit fee as hereinabove provided shall be charged.

2. For the purpose of this Chapter a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, water heaters, etc. involved.

¹3. The following permit fees shall be charged:

- a. Minimum fee for all permits, \$24.00.
- b. Fixture fee shall be \$8.00 per fixture.

¹ Amended 09/20/99

- c. Re-inspection fee, \$24.00. A reinspection fee shall be charged by the local Plumbing Inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
- d. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee shall be \$20.00.
- e. A hook-up fee of \$24.00 shall be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
- f. A hook-up fee of \$24.00 shall be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
- g. Relocated mobile homes, modular homes or any other similar structures shall be considered as new conventional stick built structures. A plumbing fixture fee shall be charged based on this Section.
- h. A permit is valid only for the named applicant and may be transferred by payment of a \$8.00 transfer fee.

Section 3 -- Subsurface Wastewater Disposal System Fees

A. Prior to the Local Plumbing Inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the Local Plumbing Inspector a permit fee calculated in accordance with the following schedule:

² 1. PERMITS FOR COMPLETE DISPOSAL SYSTEMS

a. Engineered System	\$200.00
b. Non-Engineered System	\$100.00
c. Primitive System (includes one alternative toilet)	\$100.00
d. Separate laundry disposal field	\$ 35.00
e. Seasonal Conversion Permit	\$ 50.00
f. Variance	\$ 20.00

2. PERMITS FOR SEPARATE PARTS OF DISPOSAL SYSTEM

a. Alternative toilet (only)	\$ 50.00
b. Disposal Field (engineered system)	\$150.00
c. Disposal Field (non-engineered system)	\$ 75.00
d. Treatment tank (non-engineered system)	\$ 50.00
e. Treatment Tank (engineered system)	\$ 80.00
f. Holding Tank	\$100.00
g. Variance	\$ 20.00

²Amended 01/26/98

CHAPTER 27
PARADE ORDINANCE OF THE CITY OF ELLSWORTH

Section 1. Definitions. (a) "Chief of Police" is the Chief of Police of the City of Ellsworth. (b) "City" is the City of Ellsworth. (c) "Parade" is any parade, march ceremony, show, exhibition, pageant, or procession of any kind, or any similar display, in or upon any street, park or other public place in the City. (d) "Parade Permit" is a permit as required by this ordinance. (e) "person" is any person, firm, partnership, association, corporation, company or organization of any kind.

Section 2. Permit Required. No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the Chief of Police.

Section 3. Exceptions. This Ordinance shall not apply to the following: (a) Funeral processions. (b) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities. (c) A Governmental agency acting within the scope of its function.

Section 4. Application. An application for a Parade Permit shall be filed with the Chief of Police not less than five days nor more than thirty days before the date on which it is proposed to conduct the parade. The application for a parade permit shall set forth the following information: (a) The name, address and telephone number of the person seeking to conduct such parade. If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible heads of such organization. (b) The name, address and telephone number of the person who will be the parade chairman and who will be responsible for its conduct. (c) The date when the parade is to be conducted. (d) The route to be traveled, the starting point and the termination point. (e) The approximate number of persons who, and the animals and vehicles which, will constitute such a parade. The type of animals and description of the vehicles. (f) The hours when such parade will start and terminate. (g) The time at which units of the parade will begin to assemble at any such assembly area or areas. (h) Additional information which the Chief of Police shall find reasonably necessary to a fair determination as to whether a permit should be issued.

Section 5. LATE APPLICATION. The Chief of Police, where good cause is shown therefore, shall have the authority to consider any application hereunder which is filed before the date such parade is proposed to be conducted.

Section 6. STANDARDS FOR ISSUANCE. The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as otherwise be obtained, he finds that:

(a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route.

(b) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection or, or ambulance service to, areas contiguous to such assembly areas.

(c) The conduct of such parade will not interfere with the movement of fire-fighting equipment enroute to a fire.

(d) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance.

(e) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays enroute.

(f) The parade is not to be held for the sole purpose of advertising any product, goods or event, and is not designed to be held purely for private profit.

Section 7. NOTICE OF REJECTION. The Chief of Police shall act upon the application for a parade permit within five days after the filing thereof. If the Chief of Police disapproves the application, he shall mail notice of such disapproval to the applicant stating the reasons for his denial of the permit.

Section 8. APPEAL PROCEDURE. Any person aggrieved shall have the right to appeal the denial of a parade permit to the City Council. The appeal shall be taken within five days after notice. The City Council shall act upon the appeal within a reasonable time after notice thereof.

Section 9. ALTERNATIVE PERMIT. The Chief of Police, in denying an application for a parade permit, shall be empowered to authorize the conduct on a date, at a time, or over a route different from that named by the applicant. An alternate parade permit shall conform to the requirements of, and shall have the effect of a parade permit under, this ordinance.

Section 10. CONDUCT OF PARADE. The permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. The parade chairman shall restrict the participation in the parade to those persons and organizations named in the application for permit.

Section 11. INTERFERENCE. No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.

Section 12. PENALTY. Whoever violates or fails to comply with the provisions of this ordinance shall be punished by a fine of not more than \$100.00 dollars.

Voted May 26, 1971

**City of Ellsworth
Chapter 28**

Subdivision Ordinance



Adopted: May 16, 1998

With Revisions through May 21, 1990

Amended April 14, 2003

February 9, 2009

March 16, 2009 – effective May 7, 2009

Amended August, 17, 2009

Amended November 16, 2009

Amended May 16, 2011

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Article I Purposes

The purposes of these regulations are to assure the comfort, convenience, safety, health and welfare of the people, of the City of Ellsworth, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the City of Ellsworth, Maine, the Planning Board of the City Ellsworth shall consider the following criteria and before granting approval shall make findings of fact that the provisions of these regulations have been met and that the proposed subdivision will meet the guidelines of Title 30-A, M.R.S.A. Section 4404.

The subdivision:

- 1.1 Will not result in undue water or air pollution. In making this determination, the Planning Board of the City of Ellsworth shall at least consider the elevation of the land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resource rules and regulations. (Am 4/03)
- 1.2 Has sufficient water available for the reasonably foreseeable needs of the subdivision.
- 1.3 Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
- 1.4 Will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- 1.5 Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
- 1.6 Will provide for adequate solid waste and sewage waste disposal.
- 1.7 Will not cause unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.
- 1.8 Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- 1.9 Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any.
- 1.10 The subdivider had adequate financial and technical capacity to meet the above stated standards.

- 1.11 Whenever situated in whole or in part, within 250 feet of the watershed of any pond, lake river or tidal waters, will not adversely affect the quality of the body of water or unreasonably affect the shoreline of that body of water.
- 1.12 Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- 1.13 Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that all principal structures within the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.
- 1.14 Freshwater Wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.
- 1.15 River, Stream or Brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9.
- 1.16 Storm Water. The proposed subdivision will provide for adequate storm water management.
- 1.17 Spaghetti Lot Prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.
- 1.18 The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
- 1.19 For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Article II Authority and Administration

2.1 AUTHORITY

- A. These standards have been prepared in accordance with the provisions of Title 30-A M.R.S.A. sections 4403 and 3001.
- B. These standards shall be known and may be cited as "Subdivision Regulations of the City of Ellsworth, Maine."

2.2 ADMINISTRATION

- A. The Planning Board of the City of Ellsworth, hereinafter call the Board, shall administer these standards.
- B. The provisions of these standards shall pertain to all land proposed for subdivision, within the boundaries of the City of Ellsworth.

Article III Definitions

Accessory Use or Structure: A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on the lot.

Accessway: Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a residential driveway less than 500 feet in length.

Acre: A measure of land containing 43,560 square feet.

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

Agriculture: The cultivation of soil for the production or raising of food, crops, or other valuable or useful products including commercial gardening, and the growing of nursery stock.

Alteration: A change, addition, or modification requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

Apartment, Accessory: A separate dwelling unit which is located within and subordinate to a single family detached dwelling.

Automobile Junk Yard: A place occupied by three or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two vehicles or bodies, also referred to as a motor junk yard. (But excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.)

Automobile Oriented Business: A business establishment which serves its customers while they remain in their motor vehicles such as a drive-in restaurant, drive-up bank teller and a car wash.

Automobile Repair Shop: A business establishment where motor vehicles and/or their related parts are repaired, reconditioned, painted, or rebuilt.

Boarding, Rooming, or Lodging House: Any dwelling in which lodging is offered for compensation to three or more persons either individually or as families with or without meals.

Building Height: The vertical distance measured from the average elevation of the finished grade within twenty (20) feet of a building to the highest point of the building.

Bureau: State of Maine Department of Conservation's Bureau of Forestry.

Campground: A business, public or private establishment operated as a recreational site for tents, campers, trailers, and travel-trailers, or other forms of temporary shelter that can accommodate two or more parties.

Campsite, Individual private: Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Camper: For the purpose of this ordinance, a "camper" shall be defined as a travel trailer or a recreational vehicle equipped with sleeping accommodations

Cemetery: A burial ground for the interment of the dead.

Change in Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

Church: A building or group of buildings arranged, designed, intended, or used for the conduct of religious services, and accessory uses associated therewith.

Club: Any voluntary association of persons organized for fraternal, social, religious, benevolent, recreational, literary, patriotic, scientific, or political purposes whose facilities are open to members but not the general public, and which is principally engaged in activities which are not customarily carried on for pecuniary gain.

Cluster Subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space owned in common by lot unit owners, the City, or a land conservation organization.

Code Enforcement Officer: A person appointed by the Municipal Officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer shall include the Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.

Commercial Recreation - Indoor: A business establishment providing indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts, but not including mechanical, electronic, or video game arcades.

Commercial Recreation - Outdoor: A business establishment providing recreational facilities such as a golf course, tennis courts, swimming pool, ice skating rink, or riding stables, but not including campgrounds, drive-in movie theaters, race tracks, water slides or mechanical or motorized rides.

Community Building: A building owned by a non-profit organization available to the community for purposes of public assembly and community activities.

Community Use: A governmental or public service use for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-public organization, including by way of illustration and without limitation, municipal buildings, schools, public parks and recreational facilities, fire stations, ambulance services and sewage treatment plants.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations for a Final Plan, or by a vote by the

Board to waive the submission of required information. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Comprehensive Plan or Policy Statement: Any part or element of the overall plan or policy for development of the municipality, as defined in Title 30 M.R.S.A., 4961.

Conservation Easement: A non-possessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Conditional Use: A use permitted by the Planning Board subject to certain conditions and standards consistent with the General Purposes section for each zoning district. In addition to the specific uses listed for each zoning district, a conditional use may include uses similar to those listed. The Board shall only grant approval of a similar use after having found that the impact of the use will not be any greater than the impact of the use to which it is being compared.

Contiguous Lots: Lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen feet wide.

Customary Home Occupation: Any occupation or profession, which is accessory to a residential use, and provided that:

1. The home occupation is to be conducted by a member of the family residing in the dwelling;
2. All activity associated with the home occupation is conducted wholly within the dwelling unit or wholly within a structure accessory to a dwelling unit in order that no external structural change or alteration or external activities are required which change the residential character or appearance of the dwelling;
3. No machinery or equipment which emits audible sounds, air pollutants or other wastes apparent from outside the dwelling will be utilized in the home occupation;
4. The home occupation will not involve retail sales as a primary activity, but articles may be sold from the dwelling, which are incidental to the providing of the service involved in the home occupation;
5. The family member conducting the home occupation may employ at the dwelling no more than two (2) additional persons who are not members of the immediate family residing in the dwelling to assist in the home occupation (maximum of five (5) people including family members);
6. Adequate off-street parking will be provided within the lot upon which the dwelling is located in accordance with the requirements in Chapter 56, Unified Development ordinance, Article 11 Parking Standards.

Deck: A level structure adjacent to a building elevated above the surface of the ground which may have a railing but no roof, awning, or other covering.

Decorative Changes: Repainting, residing, reroofing; adding, removing or replacing trim, railing, or other non-structural architectural details; or adding, removing or changing the location of windows and doors.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking lots, and streets.

Development: Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Driveway, Commercial: Any accessway serving a commercial use generating less than 50 average daily traffic (ADT).

Driveway, Residential: A means of access from a public or private road which will serve no more than two dwelling units.

Dwelling: Any building or structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, inn, or similar use

- a. **Single-Family Dwelling** - A building designed or intended to be used exclusively for residential occupancy by one (1) family only and containing only one (1) dwelling unit.
- b. **Two Family Dwelling or Duplex** – A building designed or intended to be used exclusively for residential occupancy by no more than two (2) families and containing two (2) separate dwelling units in one (1) structure.
- c. **Multiple Dwelling:** A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units, including apartment buildings and condominiums, but excluding single-family and two-family dwellings.

Dwelling Unit: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the State of Maine and/or the City of Ellsworth, for not more than one household, or a congregate residence for 6 or less persons. A dwelling unit shall have minimum of 500 square feet.

Earth: Topsoil, sand, gravel, clay, peat, rock, or other minerals.

Emergency Mobile Home Park: A parcel of land used to accommodate several mobile homes for a temporary period.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury. (Am 4/03)

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or communication or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but not buildings.

Family: One or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage, or adoption, but not to consist of more than five (5) unrelated persons.

Farmstand: A roadside stand not exceeding 400 square feet in floor area selling only farm, garden, greenhouse, or nursery products, and between Labor Day and Christmas, cut Christmas trees, garlands, wreaths, and wreath materials.

Final Plan: The final drawings on which the applicant's plan of subdivision is presented to the Board, for approval and which, if approved, must be recorded at the Registry of Deeds.

Fishing Equipment: Personal property designed, intended, or used in connection with commercial and/or recreational fishing activities including boats, nets, buoys, traps, and line.

Fish Processing: The loading, unloading, packing, processing and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

Floor Area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including but not limited to basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Forestry: See "Timber Harvesting" and "Timber Management Activities."

Frontage - Street: The horizontal distance measured in a straight line between the intersections of the side lot lines of a lot with the right-of-way of a street.

Frontage - Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally Water-Dependent Uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to dams, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings; finfish and shellfish processing; fish storage and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boat building facilities; marinas, navigation aids; basins and channels; retaining walls; industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters.

Gasoline Service Station: A business establishment selling fuel and related products for motor vehicles.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Ordinance, Ellsworth's Great Pond are Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Half Story: That portion of a building immediately beneath a sloping roof when there is less than four feet vertically between the floor and the intersections of the bottoms of the rafters at the plate with the interior faces of the walls. A half story may be as completely used for any purpose as a full story.

Hand Crafts: The manufacturing of handcrafted articles, such as ceramics, leather goods, and jewelry.

Health Institution: A hospital, nursing home; boarding care facility or any other place for the treatment or diagnosis of human ailments, excluding professional offices.

Height: See "Building Height."

High Intensity Soil Survey: A map prepared by a certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

Home Occupation: See "Customary Home Occupation."

Hotel: A building or group of buildings having ten (10) or more guest rooms in which lodging, or meals and lodging, are offered for compensation, including motels, tourist courts, motor lodges, and cabins.

Impervious Area: The total area of a principal and accessory structures and areas that will be covered with a low-permeability material such as asphalt, concrete and compacted gravel used for parking and roadways. A natural or man-made waterbody is not considered an impervious area except for the purpose of stormwater calculations.

Industrial Park or Development: A subdivision in an area zoned exclusively for industrial uses, or a subdivision planned for industrial uses and developed and managed as a unit usually with provisions for common service for the users.

Inn: A business establishment having nine (9) or less guest rooms in which lodging is offered to guests for compensation, and meals may be offered for compensation only to the lodgers.

Institutional: A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Junkyard:

- a. **Automobile Graveyard** - a yard, field, or other area used as a place of storage for three (3) or more unserviceable, discarded worn-out or junked automobiles.
- b. **Junkyard** - a yard, field, or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps, and sanitary landfills.

Kennel: Any commercial establishment where dogs and/or cats are kept or boarded for a fee or where animal grooming is performed for a fee.

Lot: A parcel of land occupied or capable of being occupied by one (1) building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by ordinances and having frontage upon a public street, right-of-way, or private way.

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

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

Lot Coverage: The percentage of the lot covered by structures.

Lot Coverage, Shoreland: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Lot Frontage: The horizontal distance measured in a straight line connecting the intersections of the front lot line with the side lot lines.

Lot - Interior: Any lot other than a corner lot.

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

- a. **Front Lot Line** - On an interior lot, the line separating the lot from the street or right-of-way. On a corner or through lot, the line separating the lot from each street or right-of-way.
- b. **Rear Lot Line** - The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10) feet long, lying furthest from the front lot line. On a corner lot, the rear lot line shall be opposite-the front lot line of least dimension.
- c. **Side Lot Line** - Any lot line other than the front lot line or rear lot line.

Lot Minimum Area: The lot area, less the area of any land subject to rights-of-way or easements, other than utility easements servicing the lot, and also excluding lands which are below the normal high water mark or which are covered with water for at least three months per year.

Lot, Minimum Width, Shoreland: The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Width: The width of any lot as measured wholly within the lot at the required front setback along a line parallel to a straight line connecting the intersections of the front lot line with the side lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the Hancock County Register of Deeds.

Manufactured Housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, two (2) types of Manufactured Housing are included. Those two (2) types are:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of

Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

(2) This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

Those units commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Mobile Home: Housing units that comply with the "newer mobile home" standards of the United States Department of Housing and Urban Development, as defined herein under "Manufactured Housing." Substandard housing units shall not be installed in a Mobile Home Park or elsewhere in the City of Ellsworth.

Marina: A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Mineral Extraction: Any operation within any 12 month period which removes more than ~~one~~ 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Mobile Home Pad: That portion of a mobile home site reserved for the placement of a mobile home, appurtenant structures or additions.

Mobile Home Site [aka mobile home park lot]: An area of land in a Manufactured Housing Park used for installation of a mobile home and the exclusive use of its occupants that shall be designated on the Mobile Home Park plan meeting all of the requirements of this Section.

Mobile Home Park: A parcel of land under unified ownership approved the City for the placement of three (3) or more Manufactured Housing units.

Motel: See "Hotel."

Multifamily Development: A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums, or mobile home parks. (Am 4/03)

Municipal Officers: Municipal Officers shall mean the Ellsworth City Council.

Net Residential Acreage: The total acreage available for the subdivision as shown on the proposed subdivision plan, minus the area for streets or accessways and the areas which are unsuitable for development.

Non-conforming Structure or Building: A structure or accessory facility, such as parking areas lots or other conditions to which the requirements of this ordinance apply, which does not meet any one or more of the following dimensional requirements: setback, height, or lot coverage, or other standards contained in this ordinance, but which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Nonconforming Use: Any activity on the premises or in a structure not permitted as a land use in the district in which it lies, which existed prior to the passage of the district requirements prohibiting it. For the purpose of this Ordinance, a Conditional Use, as a permitted use, is not a nonconforming use.

Normal High-Water Line (non-tidal waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Nursing Home: Any dwelling in which three or more aged, chronically ill or incurably ill persons, or persons convalescing from an illness are housed and furnished with meals and nursing care for compensation.

Official Submittal Date: The date upon which the Board issues a receipt, indicating that a complete application has been submitted.

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees, or other vegetation and which is not occupied by buildings, structures, or other impervious surfaces.

Patio: A level area adjacent to a dwelling unit constructed of stone, cement or other material located at ground level, with no railing or other structure above the level of the ground.

Parking lot, private: Parking for the exclusive use of the owners, tenant, lessees, or occupants of the lot on which the parking area is located or their customers, employees or whomever else they permit to use the parking area.

Parking lot, public: Parking available to the public, with or without payment or fee.

Parking Lot: An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

Parking, commercial: Parking or storage of motor vehicles as a commercial enterprise for which any fee is charged independently of any other use of the premise.

Parking, excess: Required parking which has been demonstrated as being unused by an existing land use or exceeds the minimum ordinance requirements.

Parking, Satellite: Parking not located on a parcel or lot that is contiguous or adjacent to the parcel or a lot not containing the use for which the parking is intended.

Parking, shared: A public or private parking area used jointly by two or more users.

Parking, Valet: Parking of vehicles by an attendant provided by the establishment for which the parking is provided.

Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges, and Uses Projecting Into Water Bodies:

- a. **Temporary** - Structures which remain in the water for less than seven (7) months in any period of twelve (12) consecutive months.
- b. **Permanent** - Structures which remain in the water for seven (7) months or more in any period of twelve (12) consecutive months.

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

Planned Unit Development: A development controlled by a single developer for a mix of residential commercial, and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems, and the retention of the natural characteristics of the land.

Planning Board: The Planning Board of the City of Ellsworth created by the Ellsworth City Charter in accordance with State Statutes.

Preliminary Subdivision Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

Principal Building: The building in which the primary use of the lot is conducted.

Principal Use: A use other than one which is wholly incidental or accessory to another use on the same premises.

Privy: A pit in the ground in which human excrement is placed.

Professional and Business Offices: The place of business, other than a residential unit, of doctors, lawyers, accountants, financial, architects, surveyors, real estate and insurance agents, psychiatrists, psychologists, counselors, and the like, or in which a business conducts its administrative, financial and clerical operations and also including providers of personal services such as barbers, hairdressers, and beauticians.

Public Utility: Any person, municipal department or other entity organized to furnish water, gas, electricity, waste disposal services, communication facilities, or transportation to the public.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg; Hadley; Limerick; Lovewell; Medomak; Ondawa; Alluvia; Cornish; Charles; Podunk; Rumney; Saco; Suncook; Sunday; and Winooski.

Recording Plan: A copy of the Final Plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line location and sizes, culverts, and building lines.

Recreational Vehicle: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Restaurant: An establishment where food and drink are prepared and served to the public and where no food or beverages are served directly to occupants of motor vehicles.

Resubdivision: The division of an existing subdivision or any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

Retail Business: A business establishment engaged in the sale of goods or services to an ultimate consumer for direct use or consumption, and not for resale, not including automobile oriented businesses and, not including electronic, mechanical, or video game arcades.

River: A free-flowing body of water including its associated floodplain wetlands. For the purposes of this Ordinance Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road: this word is used interchangeably with the word Street.

Rubbish: Any discarded, worn-out abandoned, or non-functioning article or articles or materials including but not limited to tin cans, bottles, used wood products, junk appliances, junk automobiles, or parts thereof, old clothing, or household goods. The word "rubbish" shall include the words "trash," "waste materials," and "refuse."

School: An institution for education or instruction including a college, university, and public or private school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools such as schools of beauty, culture, business, dancing, driving, music or recreation which shall be deemed retail business.

Setback: The horizontal distance from a lot line to the nearest part of a structure.

Setback, Shoreline: The horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, accessway, parking lot or other regulated object or area.

Shoreland Zone: The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream, as defined in Chapter 56, Article 4. Shoreland Zoning Regulations and/or streams mapped on the Official Land Use Map.

Sign: An object, device or display, or part thereof, situated outdoors or indoors, which is directed at persons outside the premises, used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Solar Collector: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes to a building's energy supply.

Solar Energy System: A complete design or assembly consisting of a solar energy collector, an energy storage facility (when used), and components for the distribution of transformed energy.

Story: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

Street: A public or private way including but not limited to roads, alley, and other rights-of-way for vehicular and/or pedestrian use.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.

The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

Subdivision: Means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings, or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

- a. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a third lot, unless:
1. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or
 2. The division of the tract or parcel is otherwise exempt under this subchapter.
- b. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- c. A lot of 40 or more acres will be counted as a lot.
- d. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- e. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- f. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- g. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than ½ the assessed value of the real estate.
- h. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- i. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

- j. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.
- k. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
- l. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.
- m. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs E to I, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

Subdivision – Major: Any division containing more than four lots or dwelling units, or any subdivision containing a proposed street.

Subdivision - Minor: Any division containing four lots or less, and in which no street is proposed to be constructed.

Subdivision of New and/or Existing Structure: Any division of a new or existing structure which creates, through sale or lease, three (3) or more dwelling units, or three (3) or more units for commercial or industrial use, within a five-year period.

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

Terrace: See "Patio."

Theater: A fully enclosed building used for-display or presentation to the public of films, plays, or other kinds of performances.

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter 56, Article 4, Section 410.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber Harvesting and Related Activities: Timber harvesting, the construction and maintenance of accessways used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tract (or Parcel) of Land: All contiguous land in the same ownership, whether or not the tract is separated at any point by an intermittent or non-navigable stream, tidal waters where there is no flow at low tide, or a private road established by the abutting land owners.

Trailer: A vehicle without motive power and not intended for human occupancy, designed to be towed by a motor vehicle including a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Travel Trailer: See "Recreational Vehicle."

Tributary Stream: Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in Chapter 56, Article 4, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland: The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 6 meters (approximately 20 feet) tall or taller.

Use: The purpose for which land or a building or structure is arranged, designed or intended, or for which it is occupied.

Variance: A realization of the terms of the zoning ordinance which impose restrictions of lot coverage, lot size, or setback as permitted by Article VII of the Ordinance.

Warehouse: A structure or building used primarily for the storage of articles, goods or materials.

Water Body: Any great pond, river, or stream.

Water Crossing: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to accessways, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Water Dependent Use: A use which, by its nature, requires a shorefront or surface water location, including, without limitation, boat yards, marinas, boat houses, boat launching ramps, ship chandleries and commercial fishing facilities. The location of a use, which does not by its nature require a shorefront or surface water location, on a pier, boat, or barge, shall not qualify it as a water dependent use.

Wetland: A freshwater or coastal wetland.

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Wetland, Coastal: All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Wholesaling: A business establishment engaged in the bulk sale of goods or materials not manufactured or processed on the premises.

Yard: On the same lot with a principal building, a space which is open to the sky and unoccupied by any structures except a fence not more than six (6) feet in height.

Yard Sale: Display and sale of property owner's possessions (may include multi-families and their possessions). Yard sales exceeding three (3) consecutive days and/or held more frequently than (3) times in any calendar year will be considered a commercial use and require Site Plan Review.

Article IV Administrative Procedure

4.1 PURPOSE

The purpose of this Article is to establish an orderly, equitable and expeditious procedure for reviewing subdivisions.

4.2 AGENDA

In order to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare an agenda for each regularly scheduled meeting. Applicants shall request to be placed on the Board's agenda by contacting in writing, the Code Enforcement Officer at least two (2) weeks in advance of a regularly scheduled meeting. Applicants who attend a meeting but who are not on the Board's agenda may be heard but only after all agenda items have been completed, and then only if a majority of the Board so votes.

Article V Preapplication

5.1 PROCEDURE

- A. Applicant presentation and submission of sketch, plans. Twelve (12) copies of all information accompanying the plan shall be submitted. (Am 4/03)
- B. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- C. Scheduling of on-site inspection.

5.2 SUBMISSION

- A. Subdivision of New or Existing Structures: The preapplication Sketch Plan shall show the name of the property owner, address of structure to be subdivided, including tax map, lot number and zoning district; lot size; outline and dimensions (width, length, height) of existing building; outline and dimensions of proposed addition, if applicable; proposed floor plan indicating entrances and exits; parking spaces for additional dwelling units; type and availability of water supply; and the location and capacity of sewer/septic facilities.
- B. Major and Minor Subdivisions: The Preapplication Sketch Plan shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other

features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The Sketch Plan shall also contain a locus map in the upper right hand corner showing where the subdivision is located within the City of Ellsworth, in what zone, and contain the Assessor's Map Number and Lot Number.

5.3 ON-SITE INSPECTION

Within 30 days of submission, the Board or designee may hold an on-site inspection of the property. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street center and lot corners, prior to the on-site inspection. The board shall not conduct on-site inspection when there is more than one foot of snow on the ground.

5.4 RIGHTS NOT VESTED

The submittal or review of the preapplication sketch plan shall not be considered the initiation of the review process for the purpose of bringing the plan under the protection of Title 1, M.R.S.A. section 302.

Article VI Subdivision of New and Existing Structures

6.1 GENERAL

The Board may require, where it deems necessary, for the protection of public health, safety, and welfare, that a subdivision of a new or existing structure comply with all or any of the submission requirements for a minor or major subdivision.

6.2 PROCEDURE

A. Within 30 days of receipt of a preapplication, the Board will notify the applicant of any further information which will be needed for a complete application for Subdivision of new and existing structures or if, for the protection of public health, safety, and welfare, the applicant will be required to comply with all or any of the submission requirements for a Minor or Major Subdivision. Unless otherwise directed by the Board, a complete application will be considered when all the questions on the application form have been answered and supporting documentation attached. The application must be signed by the applicant or his/her agent. Twelve (12) copies of all information accompanying the plan shall be submitted.

- B. At the time the application is accepted as complete, the Board shall notify in writing all owners of abutting property that an application for subdivision approval has been submitted.
- C. Upon determination that a complete application has been submitted, the Board shall issue a dated receipt to the subdivider.
- D. The Board shall hold a public hearing within thirty (30) days of receipt of a complete application and shall publish notice of the date, time and place of hearing in a newspaper of general circulation in the municipality at least once, the date of the first publication to be at least fourteen (14) days prior to the hearing.
- E. Within thirty (30) days of a public hearing, the Board shall make findings of fact on the application and approve, approve with conditions, or deny the application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

Article VII Minor Subdivisions

7.1 GENERAL

The Board may require, where it deems it necessary for the protection of public health, safety, and welfare, that a Minor Subdivision comply with all or any of the submission requirements for a Major Subdivision.

7.2 PROCEDURE

- A. Within six months after the on-site inspection by the Board, the subdivider shall submit an application for approval of a Final Plan at least fourteen (14) days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the Sketch Plan to the Board. The Final Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board. Twelve (12) copies of all information accompanying plan shall be submitted.
- B. All applications for Final Plan approval for Minor Subdivision shall be accompanied by an application fee of \$100.00 payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the additional costs of advertising and postal notification.
- C. Upon receipt of an application for Final Plan approval of a minor subdivision, the Board shall notify in writing all owners of abutting property that an application for subdivision approval has been submitted.
- D. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's receipt of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.
- E. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the Final Plan application.
- F. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application, and shall publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. (Am 4/03)

- G. Within thirty (30) days of a public hearing, or within sixty (60) days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Final Plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

7.3 SUBMISSIONS

- A. The subdivision plan for a Minor Subdivision shall consist of two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the Municipal Office and twelve (12) copies of one or more maps or drawings drawn to a scale of not more than one hundred (100) feet to the inch. Plans for subdivisions containing more than one hundred (100) acres may be drawn at a scale of not more than two hundred (200) feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one-inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Twelve (12) copies of all information accompanying the plan shall be submitted.

The application for approval of a Minor Subdivision shall include the following information:

1. Location Map: The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:
 - a. Existing subdivisions in the proximity of the proposed subdivision.
 - b. Locations and names of existing and proposed streets.
 - c. Boundaries and designations of zoning districts.
 - d. An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.
2. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers.
3. Verification of right, title, or interest in the property.

4. A field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument to be set or found at each lot corner.
5. A copy of the deed from which the survey was based. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
6. A copy of any deed restrictions intended to cover all or part of the lots in the subdivision.
7. Indication of the type of sewage disposal to be used in the subdivision.
 - a. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department stating the Department has the capacity to collect and treat the wastewater shall be provided.
 - b. Any proposed subdivision located within 200' at its closest point to a sewer line must connect to the public system as approved by the Sewer Department Supervisor.
 - c. When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
8. Indication of the type of water supply system(s) to be used in the subdivision.
 - a. When water is to be supplied by public water supply, a written statement from the Water Department shall be submitted indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. Where the Water Department's supply line is to be extended, a written statement from the Fire Chief, stating approval of the location of fire hydrants, if any, and a written statement from the Water Department approving the design of the extension shall be submitted.
 - b. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.

- c. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
9. The date the Plan was prepared, north point, graphic map scale, names and addresses of the record owner, subdivider, and individual or company who prepared the plan, and the names of adjoining property owners. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.
10. A copy of the portion of the Hancock County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a high intensity soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.
11. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetative cover type, and other essential existing physical features.
12. Contour lines at the interval specified by the Planning Board, showing elevation in relation to Mean Sea Level.
13. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
14. A hydrogeologic assessment prepared by a certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer, and:
 - a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifer," by the Maine Geological Survey, 1981; and
 - b. The subdivision has an average density of less than 100,000 square feet per dwelling unit.
15. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.
16. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is

located in the direct watershed of a great pond, the application shall indicate which great pond.

17. A storm water management plan and erosion control management plan, per City of Ellsworth Code of Ordinance chapter 56, Article 10 - Stormwater Management and Construction Standards.
18. Areas within or adjacent to the proposed subdivision which have been identified as High or Moderate Value Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife or within the Ellsworth Comprehensive Plan. If any portion of the subdivision is located within an area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values, which qualify the site for such designation.
19. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the Local Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.
20. The location and method of disposal for land clearing and construction debris.

Article VIII Preliminary Plan for Major Subdivision

8.1 PROCEDURE

- A. Within six months after the on-site inspection by the Board, the subdivider shall submit an application for approval of a Preliminary Plan at least fourteen (14) days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the Sketch Plan to the Board. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board. Twelve (12) copies of all information accompanying plan shall be submitted.
- B. All applications for Preliminary Plan approval for a Major Subdivision shall be accompanied by an application fee of \$15.00 per lot or dwelling unit, payable by check to the municipality. In addition, the applicant shall pay a fee of \$25.00 per lot or dwelling unit to be deposited in a special account designated for that subdivision application, to be used by the Planning Board for hiring independent consulting services to review the application. If the balance in this special account shall be drawn down by 75% of the original deposit, the Board shall notify the applicant, and require that an additional \$10.00

per lot or dwelling unit be deposited as necessary. Any balance in the account remaining after a decision on the Final Plan application by the Board shall be returned to the applicant. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.

- C. The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the Preliminary Plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's receipt of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.
- D. Upon receipt of an application for Preliminary Plan approval of a Major Subdivision, the Board shall notify in writing all owners of abutting property that an application for subdivision approval has been submitted.
- E. Within thirty (30) days of receipt of a Preliminary Plan application form and fee, the Board shall notify the applicant in writing whether or not the application is complete, and what, if any, additional submissions are required for a complete application.
- F. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the Preliminary Plan application. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing.
- G. The Board shall, within thirty (30) days of a public hearing, or within sixty (60) days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, make findings of fact on the application, and approve, approve with conditions, or deny the Preliminary Plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
- H. When granting approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:
1. The specific changes which it will require in the Final Plan;
 2. The character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and

3. The amount of all performance guarantees which it will require as prerequisite to the approval of the Final Plan;

I. Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design of the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the Final Plan, the Board may require additional changes as a result of the further study of the subdivision or as a result of new information received.

8.2 SUBMISSIONS

A. Location Map.

The Preliminary Plan shall be accompanied by a location map adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The Location Map shall show:

1. Existing subdivisions in the proximity of the proposed subdivision.
2. Locations and names of existing and proposed street.
3. Boundaries and designation of zoning districts.
4. An outline of the proposed subdivision and any remaining portion of the owner's property if the Preliminary Plan submitted covers only a portion of the owner's entire contiguous holding.

B. Preliminary Plan.

The Preliminary Plan shall be submitted in twelve (12) copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The Preliminary Plan shall be drawn to a scale of not more than one hundred feet to the inch. The Board may allow plans for subdivisions containing more than one hundred acres to be drawn at a scale of not more than two hundred feet to the inch provided all necessary details can easily be read. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be mailed to each Board member no less than fourteen days prior to the meeting. The following information shall either be shown on the Preliminary Plan or accompany the application for preliminary approval:

1. Proposed name of the subdivision and the name of the municipality in which it is located, plus the Tax Assessor's Map and Lot numbers.
2. Verification of right, title, or interest in the property.
3. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments.
4. A copy of the deed from which the survey was based. A copy of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
5. A copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision.
6. Contour lines showing elevations in relation to Mean Sea Level. 6
7. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetation cover type, and other essential existing physical features.
8. Indication of the type of sewage disposal to be used in the subdivision.
 - a. When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Sewer Department indicating there is adequate capacity within the Sewer Department system to transport and treat the sewage shall be submitted.
 - b. Any proposed subdivision located within 200' at its closest point to a sewer line must connect to the public system as approved by the Sewer Department Supervisor.
 - c. When sewage disposal is to be accomplished by subsurface sewage disposal systems, test oil analyses, prepared by a licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
9. Indication of type of water supply system(s) to be used in the subdivision.
 - a. When water is to be supplied by public water supply, a letter from the servicing Water Department shall be submitted indicating there is adequate supply and pressure for the subdivision.

- b. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.
10. The date the Plan was prepared, magnetic north point, true north, graphic map scale, names and addresses of the record owner, subdivider, and individual or company who prepared the plan. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.
11. The names and addresses of owners of record of adjacent property, including any property directly across an existing public street from the subdivision.
12. The location of any zoning boundaries affecting the subdivision.
13. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
14. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
15. The width and location of any streets or public improvements shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.
- 16.
17. The proposed lot lines with approximate dimensions and lot areas.
18. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
19. The location of any open space to be preserved and a description of proposed improvements and its management.
20. A copy of that portion of the Hancock County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a high intensity soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in Geotechnics, indicating the suitability of soil conditions for those uses. (

21. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
22. A hydrogeologic assessment, prepared in accordance with Section 12.12 by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer, and:
 - a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey 1981; and
 - b. The subdivision has an average density of less than 100,000 square feet per dwelling unit.

The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality.

22. An indication of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours, proposed general mitigation, access management, and consideration of pedestrian and non-automotive needs.
23. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of Branch Lake, the application shall contain a Phosphorus Control Plan.
24. Areas within or adjacent to the proposed subdivision which have been identified as High or Moderate Value Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife or within the Ellsworth Comprehensive Plan. If any portion of the subdivision is located within an area designated as a unique natural area by the Comprehensive Plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values, which qualify the site for such designation.
25. Determination that the project is or is not in whole or in part located in the direct watershed of a Great Pond, as defined in the Ellsworth Code of Ordinance Chapter 56, Article 10 – Stormwater Management, Design and Construction Standards.
26. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places,

or have been identified in the Comprehensive Plan as sensitive or likely to contain such sites.

27. Show the limits of construction disturbance.

Article IX Final Plan for Major Subdivision

9.1 PROCEDURE

- A. The subdivider shall, within six months after the approval of the Preliminary Plan, file with the Board an application for approval of the Final Plan at least fourteen (14) days prior to a scheduled meeting of the Board. If the application for the Final Plan is not submitted within six months after Preliminary Plan approval, the Board may refuse without prejudice to act on the Final Plan, and require resubmission of the Preliminary Plan. The Final Plan shall approximate the layout shown on the Preliminary Plan, plus any recommendations made by the Board.
- B. All applications for Final Plan approval for Major Subdivision shall be accompanied by an application fee of \$20.00 per lot or dwelling unit payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.
- C. Prior to submittal of the Final Plan application, the applicant shall show written proof that applications have been filed for the following, where appropriate:
1. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Fresh Water Wetland Act, Alteration of Streams and Rivers Act, or if a Wastewater Discharge License is needed.
 2. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 3. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system is to be utilized.
 4. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.
 5. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- D. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.

- E. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the Final Plan application.
- F. A public hearing may be held by the Board within thirty (30) days after the issuance of a receipt for the submittal of a complete application. This hearing shall be advertised in a newspaper of local circulation at least two times. The date of the first publication to be at least seven days before the hearing and the notice of the hearing shall be posted in at least three prominent places at least seven days prior to the hearing. When a subdivision is located within 500 feet of a municipal boundary, and a public hearing is to be held, the Board shall notify the Clerk and the Planning Board of the adjacent municipality involved, at least ten days prior to the hearing. (Am 4/03)
- G. The Board shall notify the Road Supervisor, Police Chief, and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
- H. Before the Board grants approval of the Final Plan, the subdivider shall meet the performance guarantee requirements contained in Article XIV.
- I. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.
- J. The Board, within thirty (30) days from the public hearing or within sixty (60) days of receiving a complete application, if no hearing is held, shall make findings of fact, and conclusions relative to the standards contained in Title 30-A, section 4404 and in these regulations. If the Board finds that all standards of the Statute and these regulations have been met, they shall approve the Final Plan. If the Board finds that any of the standards of the Statute or these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

9.2 SUBMISSIONS

The Final Plan shall consist of twelve (12) maps drawn to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border line on the left side for

binding and a one inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Board. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other be filed at the Municipal Offices, shall be submitted. In addition, one copy of the Final Plan, reduced to a size of 8 ½ by 11 inches or 11 by 17 inches, and all accompanying documents shall be mailed to each Board member no less than fourteen days prior to the meeting. (Am 4/03)

The application for approval of the Final Plan shall include the following information.

- A. Proposed name of the subdivision and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers.
- B. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.
- C. The number of acres within the proposed subdivision, location of property lines, existing buildings, and essential existing physical -features.
- D. Indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department indicating the Department has reviewed and approved the sewerage design shall be submitted.(Am 4/03)
- E. Indication of the type of water supply system(s) to be used in the subdivision.
 - 1. When water is to be supplied by public water supply, a written statement from the Water Department shall be submitted indicating the Department has reviewed and approved the water system design. A written statement shall be submitted from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.
 - 2. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
 - 3. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public water system as approved by the Water Department Supervisor.
- F. The date the Plan was prepared, magnetic and true north point, graphic map scale, names and addresses of the record owner subdivider, and individual or company who prepared the plan.
- G. The location of any zoning boundaries affecting the subdivision.

- H. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- I. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The length of all straight lines, the deflection angles radii, length of curves and central angles of curves, tangent distances and tangent bearings for each street shall be included.
- J. The width and location of any streets or public improvements shown upon the Official Land Use Map and the Comprehensive Plan, if any, within the subdivision.
- K. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the municipality of all public open spaces shown on the Plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the Municipal Officers are satisfied with the legal sufficiency of the written offer of cession shall be included.
- L. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
- M. Any proposed subdivision located within 200' at its closest point must connect to the public sewer system as approved by the Sewer Department Supervisor.
- N. A storm water management plan and an Erosion and Sedimentation Control Plan, prepared by a registered professional engineer in accordance with the Ellsworth Code of Ordinance – Chapter 56, Article 10 Stormwater Management, Design and Construction Standards.
- O. A phosphorus impact analysis and control plan conducted using the procedures set forth in *Phosphorus Control in Lake Watersheds* A long-term maintenance plan for all phosphorus control measures, per Ellsworth Code of ordinance Chapter 56, Article 10 - Stormwater Management, Design, and Construction Standards.
- P. The contour lines shown on the plan shall be at an interval of no less than two feet.
- Q. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.

R. The location and method of disposal for land clearing and construction debris.

9.3 FINAL APPROVAL AND FILING

- A. No plan shall be approved by the Board as long as the subdivider is in violation of the provisions on a previously approved Plan.
- B. Upon findings of fact and determination that all standards in Title 30-A, M.R.S.A. section 4404, and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the Final Plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the Code Enforcement Officer. Any subdivision not recorded in the Registry of Deeds within ninety (90) days of the date upon which the plan is approved and signed by the Board shall become null and void.
- C. At the time the Board grants Final Plan approval, it may permit the Plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to insure the orderly development of the Plan. If any municipal or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the Plan to be divided into two or more section subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision.
- D. No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with Article IX. The Board shall make findings that the revised plan meets the standards of Title 30-A, M.R.S.A. section 4404, and these regulations. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds.
- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the Plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the Municipal Officers covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- F. Except in the case of a phase development plan, failure to complete substantial construction of the subdivision within five years of the date of approval and signing of the Plan shall render the Plan null and Void. Upon determining that a

subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

Article X Revisions to Approved Plans

10.1 PROCEDURE

An applicant for a revision to a previously approved plan shall, at least fourteen days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

10.2 SUBMISSIONS

The applicant shall submit a copy of the approved plan, as well as twelve (12) copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

10.3 SCOPE OF REVIEW

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

Article XI Enforcement

11.1 INSPECTION OF REQUIRED IMPROVEMENTS

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall:
 - 1. Notify the Code Enforcement Officer in writing of the time when he/she proposes to commence construction of such Improvements, so that the Municipal Officers can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
 - 2. Show proof of a signed agreement between the subdivider and a Licensed Civil Engineer that the Engineer will accept responsibility for on-site inspection and certification that all specifications have been met. Such agreement will contain a fee schedule and dates for which the agreement is valid.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report in writing to the Municipal Officers, Planning Board, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the municipality's rights.
- C. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer is authorized to approve minor modifications due to, unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the City. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall request on-site inspection and approval from the Review Board.
- D. At the close of each summer construction season the City shall, at the expense of the subdivider, have the site inspected by a qualified individual. By December 1st of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered.

- E. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
- F. The subdivider or builder shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality.

11.2 VIOLATIONS AND ENFORCEMENT

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Board in accordance with these regulations.
- B. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry Deeds.
- C. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.
- D. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100, and not more than \$2500 for each such conveyance, offering or agreement. The Municipality may institute proceedings to enjoin the violation of this section, and may collect attorneys' fees and court costs if it is the prevailing party.
- E. No public utility, water district, sanitary district and/or utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Board.
- F. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in these regulations and recorded in the Registry of Deeds.
- G. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.

Article XII General Standards

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

12.1 CONFORMANCE WITH COMPREHENSIVE PLAN

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the municipality and with the provisions of all pertinent state and local codes and ordinances.

12.2 RETENTION OF OPEN SPACES AND NATURAL OR HISTORIC FEATURES

- A. If the proposed subdivision contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.
- B. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space, with provisions made for continued public access.

12.3 LAND NOT SUITABLE FOR DEVELOPMENT

The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the Minimum Lot Size Law.

- A. Land which is situated below the normal high water mark of any water body.
- B. Land which is located within the 100 year frequency floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof through the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two (2) feet above the 100 year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Land that has been created by filling or draining a pond ~~of~~ or wetland.
- E. Wetlands.

12.5 LOTS

- A. All lots shall meet the minimum requirements of the Land Use Ordinance for the zoning district in which they are located. The lot configuration should be designed to maximize access to solar energy on building sites with suitable orientation.
- B. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated. Wherever possible, parking areas lots shall be laid out to coincide with building locations to maximize solar energy gain.
- C. Lots with multiple frontages shall be avoided wherever possible. When lots do have frontage on two or more roads, the plan, and deed restrictions shall indicate vehicular access on the less traveled way. See Ellsworth Code of Ordinances, Article 9 – Street Design and Construction Standards 910.3.
- D. Wherever possible, side lot lines shall be perpendicular to the street.
- E. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future resubdivision. Where public utilities could be extended to the subdivision in the foreseeable future, the subdivision shall be designed to accommodate the extensions of utilities.
- F. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
- G. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.
- H. Lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the Postmaster and his comments considered by the Board.
- I. Where a major subdivision abuts or contains an existing or proposed State-owned street, permits must be obtained from the Maine Department of Transportation for entrance/driveway. This requirement shall be noted on the Plan and in the deed of any lot with frontage on the State-owned street.

12.6 UTILITIES

- A. Utilities, with the exception of electric, telephone and television cable, shall be installed underground except as otherwise approved by the Board.
- B. Underground utilities shall be installed prior to the installation of the final gravel base of the road.
- C. The size, type and location of street lights, electric and gas lines, telephone, and other utilities shall be shown on the plan and approved by the Board.

12.7 REQUIRED IMPROVEMENTS

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

A. Monuments

- 1. Stone monuments shall be set at all street intersections and points of curvature or minimum 4' rebar, but no further than 750 feet apart along street lines without curves or intersections.
- 2. Stone monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less or minimum 4' rebar.
- 3. Stone monuments shall be a minimum of four inches square at the top and four feet in length or minimum 4' rebar, and set in the ground at final grade level. After they are set, drill holes, ½ inch deep shall locate the point or points described above.
- 4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation.

B. Water Supply

- 1. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public water system.
 - a. The subdivider shall provide a written statement from the servicing water department or district that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The subdivider shall be responsible

for paying the costs of system improvements necessary to serve the subdivision.

- b. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Department and the Fire Chief.

2. When the location of a subdivision does not allow for a financially reasonable connection to a public water system, the Board may allow the use of individual wells or a private community water system.

C. Sewage Disposal

1. Public System

- a. Any proposed subdivision located within 200' at its closest point to a sewer line must connect to the public sewer system.
- b. A sanitary sewer system shall be installed at the expense of the subdivider when there is a public sanitary sewer line located within 200 feet of the proposed subdivision at its nearest point. The Sewer Department shall certify that providing service to the proposed subdivision is within the capacity of the system's collection and treatment system.

2. Private Systems

- a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.
- b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

D. Surface Drainage per the Ellsworth Code of Ordinance – Chapter 56, Article 10 Stormwater Management, Design and Construction Standards.

12.8 LAND FEATURES

- A. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, lots, and building excavations.
- B. Except for normal thinning, landscaping, and cutting trees to provide to direct sunlight, existing vegetation shall be left intact to prevent soil erosion and to minimize storm water runoff.
- C. To prevent soil erosion in shoreline areas, tree cutting in the strip extending one hundred feet inland from the normal high water mark of any waterbody shall be limited in accordance with Article 10, Section 1, Subsection C.11.

12.9 CLUSTER DEVELOPMENTS

- A. Purpose.

The purpose of these provisions is to allow for innovative concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the Zoning District in which the development is proposed. To this end, the layout, and dimensional requirements of the Land Use Ordinance may be altered without restriction except height limitations.

- B. Basic Requirements

- 1. All the requirements and standards of these regulations, except those dealing with lot layout and dimensions shall be met.
- 2. The minimum area of land in a cluster development shall be ten acres, except where there is public water and sewer.
- 3. The plan shall indicate the location of all proposed roads, structures, parking lots, footpaths and common open space.
- 4. No building shall be constructed on soil types classified by the S.C.S. as being poorly or very poorly drained.
- 5. Where a cluster development abuts a waterbody, a portion of the shoreline, as well as reasonable access to it, shall be part of the common land.

6. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a common water supply and distribution system, either public or private.
7. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a public sewer system or to a central collection and treatment system.
8. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes, and natural drainage areas, in accordance with an overall plan for site development and landscaping.

12.10 DEDICATION AND MAINTENANCE OF COMMON OPEN SPACE AND SERVICES

- A. The developer or subdivider shall be responsible for its maintenance until development sufficient to support the association has taken place.
- B. The by-laws of the proposed Homeowners Association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.
- C. Covenants for mandatory membership in the Homeowners Association setting forth the owner's rights, interests, and privileges in the association and the common property, shall be reviewed by the Board and included in the deed for each lot or dwelling.

12.11 CONSTRUCTION IN FLOOD HAZARD AREAS

When any part of a subdivision is located in a special Flood Hazard Area as identified by the Federal Emergency Management Agency, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area.

12.12 IMPACT ON GROUND WATER

- A. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
 1. A map showing the basic soils types.

2. The depth to the water table at representative points throughout the subdivision.
 3. Drainage conditions throughout the subdivision.
 4. Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
 5. An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For subdivisions within the watershed of a lake, projections of the subdivision's impact on groundwater phosphate concentrations shall also be provided.
 6. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- B. Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
 - C. No subdivision shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
 - D. If groundwater contains contaminants in excess of the Primary Drinking Water Standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
 - E. If groundwater contains contaminants in excess of the Secondary Drinking Water Standards, the subdivision shall not cause the concentration of the parameters, in question to exceed 150% of the ambient concentration.
 - F. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the Final Plan, and as restrictions in the deeds to the affected lots.

12.13 ACCESS CONTROL AND TRAFFIC IMPACTS

A. General

Provisions shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on public streets and within the subdivision. More specifically, access and circulation shall conform to the Ellsworth Code of Ordinance – Chapter 56, Article 9 – Street Design and Construction Standards.

Article XIII Street and Storm Drainage Design and Construction Standards

13.1 GENERAL REQUIREMENTS

A. The Board shall not approve any subdivision plan unless proposed streets and storm water management systems are designed in accordance with Chapter 56 Article 9 – Street Design and Construction Standards and Article 10 - (Stormwater Managements, Design, and Construction Standards. Approval of the Final Plan by the Board, shall not be deemed to constitute or be evidence of acceptance by the municipality of any street or easement.

C. Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan & within the deed.

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the City of Ellsworth even if they meet the city street design & construction standards."

13.7 ADDITIONAL IMPROVEMENTS AND REQUIREMENTS

A. Erosion Control. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.

B. Cleanup. Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, lined, fertilized, and seeded.

C. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of

existing streets within the Municipality, and shall be subject to the approval of the City Assessor's Office. No street name shall be the common given name of a person. The developer shall reimburse the Municipality for the costs of installing street names, traffic safety and control signs. Street lighting shall be installed as approved by the Board.

Article XIV Performance Guarantees

TYPES OF GUARANTEES

With submittal of the application for Final Plan approval, the subdivider shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction. Performance Guarantees shall be required only when public utilities are used. (Am 4/03)

- A. Either a certified check payable to the City or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
- B. A performance bond payable to the City issued by a surety company, approved by the Municipal Officer, or City Manager;
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the City may draw if construction is inadequate, approved by the Municipal Officers, or City Manager; or
- D. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the Road Supervisor, Municipal Officers, and/or Town Attorney.

14.2 CONTENTS OF GUARANTEE

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the City shall have access to the funds to finish construction.

14.3 ESCROW ACCOUNT

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the

amount returned to the subdivider and the amount withdrawn to complete the required improvements.

14.4 PERFORMANCE BOND

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

14.5 LETTER OF CREDIT

An irrevocable letter of credit from a bank or other lending institutions shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

14.6 CONDITIONAL AGREEMENT

The Board, at its discretion may provide for the subdivider to enter into a binding agreement with the municipality in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the Final Plan on the condition that no more than four lots may be sold or built upon until either:

- A. It is certified by the Board or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
- B. A performance guarantee, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions shall be on the Final Plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 13.8.

14.7 PHASING OF DEVELOPMENT

The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

14.8 RELEASE OF GUARANTEE

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the Registered Civil Engineer, the Code Enforcement Officer, and other agencies and departments involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

14.9 DEFAULT

If, upon inspection, the Registered Civil Engineer or the Code Enforcement Officer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he/she shall so report in writing to the Municipal Officers, the Board, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the City's rights.

14.10 IMPROVEMENTS GUARANTEE

Performance guarantees shall be tendered for all improvements required by Section 11.7 of these regulations and for the construction of the streets.

Article XV Waivers

15.1 WAIVERS AUTHORIZED

Where the Board makes written findings of fact that there are special circumstances of a particular lot proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Land use ordinance, or these regulations.

15.2 FINDING OF FACTS

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or is inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Land use ordinance, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

15.3 CONDITIONS

When granting waivers to any of these regulations in accordance with Sections 14.1 and 14.2, the Board shall set conditions so the purposes of these regulations are met.

15.4 WAIVERS TO BE SHOWN ON FINAL PLAN

When the Board grants a waiver to any of the improvements required by these regulations, the Final Plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

Article XVI Appeals

- 16.1 An aggrieved party may appeal any decision of the Board under these regulations to Hancock County Superior Court, within thirty days.

CHAPTER 29
REGULATION OF CITY OWNED LAND

Section 1. It shall be unlawful to set up tents, shacks, or other temporary shelter for the purpose of overnight camping, nor shall any trailer, camper, or other type vehicle for the purpose of overnight camping be parked or placed on any land owned by the City of Ellsworth.

Section 2. It shall be unlawful to build or attempt to build any fire on land owned by the City of Ellsworth except in such areas and under such regulations as may be designated by the City of Ellsworth.

Section 3. Whoever violates or fails to comply with the provisions of this Chapter shall be punished by a fine of not more than \$100.00.

*Section 4. Mini-bikes, motorcycles and snowmobiles are prohibited from operating on land owned by, or controlled by, the Ellsworth School Committee, unless authorized by the School Principal.

*Section 5. Mini-bikes, motorcycles, snowmobiles and other motorized recreational vehicles are prohibited from operating on the Civil War Monument Park on Route 1, the Junior High School Bicentennial Park on Union River in back of the library, and the Union River Waterfront Park, except that motorcycles may be operated by licensed operators in designated parking areas. The City Council may, however, from time to time, authorize the use of such vehicles on city-owned property for sports or competitive events.

Voted July 24, 1972

*Amended October 18, 1976

¹CHAPTER 30
DEPARTMENT OF TAX ASSESSMENT

SECTION 1. In accordance with 30-A MRSA, Section 5351, the position of full time single assessor is created, who shall be appointed by the City Council.

SECTION 2. The single assessor shall exercise the same powers and be subject to the same duties and liabilities as "Assessors of Taxes" under Section 10 of the City Charter and the laws of the State of Maine.

²SECTION 3. The Board of Appeals established by Chapter 38, Ellsworth Code of Ordinances, is hereby appointed to serve as the Board of Assessment Review. The Board shall be subject to all duties and liabilities provided by the laws of the State of Maine, and shall follow the procedures set forth in 30-A MRSA, Section 2691.

A true copy

Attest: Jim A. Kelley City Clerk

¹ Adopted January 15, 1973

² Repealed and replaced 9/20/1993 and again on 5/15/2000

CHAPTER 31
RECREATION COMMISSION

SECTION 1. There is hereby created a Recreation Commission consisting of nine (9) members, eight (8) of who are regular members and one of who is an alternate member¹. Five (5) of the members of the initial Commission shall be appointed for a term of two (2) years and three (3) of the members of the initial Commission shall be appointed for a term of one (1) year. Thereafter all terms of office of the Commissioners shall be two (2) years.

SECTION 2. All members of the commission shall be residents of the City of Ellsworth and at least one member of the Commission shall be appointed from the membership of the Ellsworth City Council.

SECTION 3. The duties of the Recreation Commission are as follows:

- (1) To plan, promote, organize and supervise a comprehensive municipal recreation program and administer the same in the interest of the entire community.
- (2) To review the recreational use of playgrounds, playfields, recreation centers, swimming areas, ball diamonds, and such other recreation areas and facilities as may be made available to carry out the City's recreation program.
- (3) Conduct and promote any form of recreation, cultural or social activity that will employ the leisure time of citizens in a wholesome and constructive manner.
- (4) Direct the expenditure of all moneys appropriated by the City Council on all matters concerning recreation.
- (5) To serve as the advisory committee to the City Council on all matters concerning recreation.²
- (6) The Recreation Commission may adopt rules and regulations governing the facilities over which they have jurisdiction. Such rules and regulations shall be filed with the City Clerk.³

SECTION 4. The Recreation Commission shall keep books and records of all it's doing and shall make an accounting to the City Council of all money appropriated by the City Council for its use.

SECTION 5. The recreation commission shall annually at the first regular meeting of the City Council after the annual election in November¹ of the each year, submit a report to the City Council of its activities for the prior year. The City Council may from time to time during the year request interim reports form the recreation commission.

SECTION 6. The members of the recreation commission shall serve without pay.

Adopted 5/21/73

¹ Amended 9/16/96

² Amended 3/2089

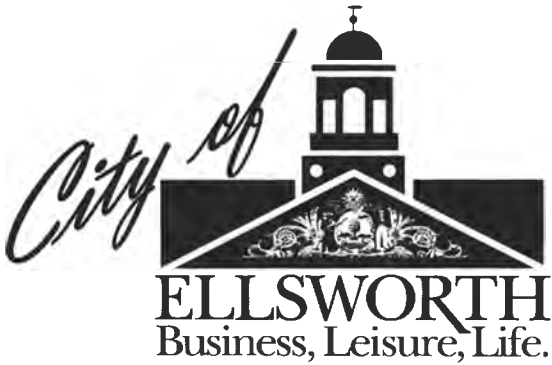
³ Amended 2/11/02

City of Ellsworth Ordinances

Chapter 32

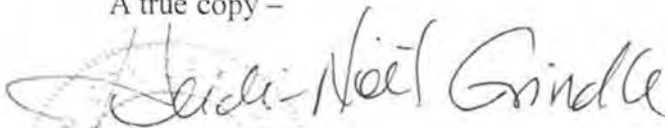
**Solicitation of
Signatures during
Elections Ordinance**

This ordinance was repealed 2/13/2006.



CHAPTER 33
FLOODPLAIN MANAGEMENT ORDINANCE
CITY OF ELLSWORTH, MAINE

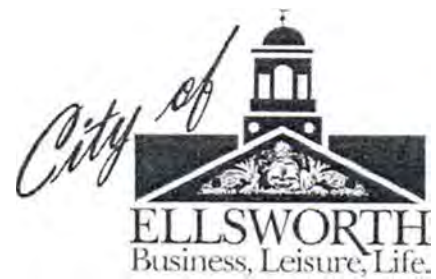
A true copy -



Heidi-Noël Grindle

Attest: Heidi-Noël Grindle

City Clerk



Adopted: October 16, 2006
Amended with revisions through April 2005
Repealed and replaced May 16, 2016
Effective: July 20, 2016



FLOODPLAIN MANAGEMENT ORDINANCE
FOR THE
CITY OF ELLSWORTH, MAINE

ENACTED: MAY 16, 2016
Date

EFFECTIVE: JULY 20, 2016
Date

CERTIFIED BY: Heidi-Noel Grindle
Signature

CERTIFIED BY: Heidi-Noel Grindle
Print Name

CITY CLERK
Title

Affix Seal



FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I – PURPOSE AND ESTABLISHMENT

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

Therefore, the City of Ellsworth, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

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

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

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

The areas of special flood hazard, Zones A, AE, and VE for the City of Ellsworth, Hancock County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Hancock County, Maine," dated July 20, 2016 with accompanying "Flood Insurance Rate Map" dated July 20, 2016 with panels: 544D, 563D, 564D, 568D, 569D, 588D, 589D, 590D, 591D, 593D, 710D, 726D, 727D, 729D, 731D, 732D, 733D, 734D, 736D, 740D, 741D, 742D, 744D, 751D, 752D, 753D, 754D, 756D, 757D, 758D, 759D, 761D, 762D, 763D, 764D, 766D, 767D, 768D, 769D, 956D, and 957D, derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Hancock County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the City of Ellsworth, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;

- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE and VE from data contained in the "Flood Insurance Study - Hancock County, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.K. and IX.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 - 1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
 - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 - 4. a certified statement that bridges will meet the standards of Article VI.M.;
 - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$50.00 shall be paid to the City Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood and floodway data contained in the "Flood Insurance Study - Hancock County, Maine," as described in Article I.;
 - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 - 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated

but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,

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

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

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

A. All Development - All development shall:

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

B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** – On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
 3. Zone VE shall meet the requirements of Article VI.P.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or

- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

3. Zone VE shall meet the requirements of Article VI.P.

H. Manufactured Homes - New or substantially improved manufactured homes located within:

1. Zone AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
- b. meet the anchoring requirements of Article VI.H.1.c.

3. Zone VE shall meet the requirements of Article VI.P.

I. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A and AE shall either:

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

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

2. Zone VE shall meet the requirements of either Article VI.I.1.a. and b., or Article VI.P.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones A and AE, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. have unfinished interiors and not be used for human habitation;
2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
3. be located outside the floodway;
4. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
5. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

- b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
 3. In Zones AE and A riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
 1. Enclosed areas are not "basements" as defined in Article XIV;
 2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
 3. The enclosed area shall not be used for human habitation; and,
 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:
 1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

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

N. Containment Walls - New construction or substantial improvement of any containment wall located within:

1. Zones A, AE, and VE shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AE, and VE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

P. Coastal Floodplains -

1. All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zone VE shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;

- (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
- b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 - (3) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
- c. require a registered professional engineer or architect to:
 - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
 - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zone VE is prohibited.
4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

- b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

- 1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
- 2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
- 3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
- 4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
- 5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
 1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
 2. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the required certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided in order to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE X - APPEALS AND VARIANCES

The Board of Appeals of the City of Ellsworth may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,

- d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Article X and Article VI.K. are met; and,
 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 2. such construction below the base flood level increases risks to life and property; and,
 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.

2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE XI - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of;
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XII - VALIDITY AND SEVERABILITY

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

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

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

ARTICLE XIV - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - a small detached structure that is incidental and subordinate to the principal structure.

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

Area of Special Flood Hazard - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

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

Basement - area of a building that includes a floor that is subgrade (below ground level) on all sides.

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

Building - see Structure.

Certificate of Compliance - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

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

Conditional Use - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

Containment Wall – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

Development – a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

Digital Flood Insurance Rate Map (FIRM) – see **Flood Insurance Rate Map**

Elevated Building - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zone VE, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

Elevation Certificate - an official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or

by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Floodprone Area - land area susceptible to being inundated by water from any source (see flooding).

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

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

Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - the lines marking the limits of floodways on federal, state, and local floodplain maps.

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

Functionally Dependent Use - a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

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

Manufactured Home Park or Subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - when related to the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

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

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

North American Vertical Datum (NAVD)- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

100-year flood - see **Base Flood**.

Recreational Vehicle - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

- a. the channel of a river or other water course 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
- b. when not designated on the community's Flood Insurance Rate Map, it 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 floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

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

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

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

modification of any construction element, whether or not that alteration affects the external dimensions of the building.

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

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

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

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

ARTICLE XV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (e) Rev. 01/16
Prepared by DACF/JP

**CHAPTER 34
PERSONNEL ORDINANCE
CITY OF ELLSWORTH, MAINE**

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



CITY HALL

*Adopted 04/20/1998
Amended 09/08/2003
Repealed 07/21/2008
New Ordinance Adopted 07/21/2008
Effective 08/22/2008
Amended 09/15/2008
Amended 03/16/2009
Amended 08/17/2009
Amended 06/20/2011
Amended 08/21/2017*

PURPOSE OF ORDINANCE

The City of Ellsworth Personnel Ordinance is hereby set forth to establish the current policies and procedures applicable to the City's employees. The Personnel Ordinance does not constitute an employment contract between the City and any employee.

These rules set forth the principles and procedures which will give reasonable assurance to the City of Ellsworth and its employees that personnel matters will be dealt with on an equitable basis and that the citizens of the City of Ellsworth may derive the benefits and advantages which can be expected to result from a competent staff of city employees.

These rules apply to all employees unless otherwise noted. Volunteers shall be subject to only those provisions that are specifically stated to include them, if any.

CHAPTER I - Employment Philosophy

1. Employment in the City government shall be based on merit and free of personal political consideration.
2. Just and equitable incentives and conditions of employment shall be established and maintained to promote efficiency and economy in the operation of the municipal government.
3. Positions having similar duties and responsibilities shall be classified and compensated for on a uniform scale.
4. Efforts shall be made to maintain morale by fair administration of this ordinance and by consideration of the rights and interests of the employees, consistent with the best interests of the public and the City.
5. Continuity of employment shall be subject to satisfactory performance of work, availability of funds and appropriate employee conduct.
6. Management Rights: The City retains the right to determine working hours, salaries, size of its employment force and the formulation of ordinance related to personnel matters. In the case of any unionized department, the City retains these rights through the negotiation of a contract with the union.

CHAPTER II - Selection

Section 1. Recruitment

The City of Ellsworth shall employ the best-qualified persons who are available at the salary levels established for City employment. The City hiring authority, with the cooperation of department heads, shall seek out the most desirable employees for vacant positions. Except as provided in Section 2 below, within the limits of time during which a position must be filled, there shall be as wide a search for qualified candidates as is practicable.

The character of an employment search will vary from position to position, but may include, but not limited to; advertising, departmental notices, open competitive examination, and contact with State and other employment offices.

Section 2. Preference

First preference in filling any vacancy shall be given to the promotion or transfer of present employees having the qualifications for the vacant position. It is recognized, however, that in order to meet specific requirements for a position, it may be necessary to hire a non-employee to fill the vacancy. Such a

decision, however, shall only be made after a careful review of the qualifications and/or training requirements of present City employees who apply for the position. In cases where residents of The City of Ellsworth and non-residents are equally qualified for particular vacant positions, residents shall receive first consideration in filling such vacancies.

Section 3. Applications

The employment application form shall be as established by the City Manager, in accordance with all applicable municipal, state and federal laws. Such forms must be signed by the applicant and may require whatever information is deemed necessary by the Manager for the evaluation of all applicants. The City of Ellsworth relies upon the accuracy of information contained in the employment application, as well as the accuracy of other data presented throughout the hiring process and employment. Any willful misrepresentations, falsifications, or material omissions in any of this information or data may result in exclusion of the individual from further consideration for employment or, if the person has been hired, termination of employment

Section 4. Interviews

The hiring authority or his designee may request a personal interview with one or more applicants for any position to assist in the determination of the best candidate for employment.

Section 5. Recommendations

When the hiring authority has designated another person(s) to evaluate applications and/or conduct interviews, that designee (s) shall submit in writing a list of names of qualified candidates with a brief evaluation report of each and a recommendation for appointment to the vacant position. In all cases, the hiring authority shall have the final decision.

Section 6. Equal Employment Opportunity

The City of Ellsworth provides equal employment opportunity to all applicants and employees. This policy applies to all employment-related decisions, including recruiting, hiring, assigning, supervising, training, upgrading, transfer, compensation, benefits, discipline, discharge, promotion, and education.

The City of Ellsworth shall not discriminate in employment opportunities or practices against any individual with regard to race, color, ancestry, national origin, religion, political affiliation, sex, marital status, age, sexual orientation, physical or mental disability, or any other status protected by law.

The City of Ellsworth will make reasonable accommodations for applicants and qualified individuals with known disabilities unless doing so would result in an undue hardship.

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor, Department Head or the City Manager. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

Section 7. Hiring of Relatives

It is the City's practice to hire and promote on the basis of an individual's merit, knowledge, skills and abilities. The employment of relatives in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. For that reason, except as may be authorized in certain circumstances by the City Manager, such as, circumstances requiring emergency temporary staffing, employment of relatives within the same department or division where one relative would hire,

supervise, discipline, conduct performance reviews or set any other conditions of employment for another relative is prohibited. These restrictions are also applicable when assigning, transferring or promoting an employee.

For the purposes of this ordinance, relative includes the following: any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage such as domestic partners, adopted children, and foster children.

Employees who marry or establish a close personal relationship during employment can continue in their current positions as long as an employment relationship with one relative supervising the other and/or establishing the conditions of employment is not created through marriage, reorganization, or other circumstance. Employees who become subject to the provisions of this ordinance must inform their supervisor or Department Head as soon as practical. If such a supervisory relationship does occur between relatives, one of the employees will either be required to transfer to another open position for which that person is qualified or one of the employees will be required to resign his/her employment with the City within a period of no more than 30 days from the date on which the situation arose. If neither employee is willing to resign, the City has the right to terminate either employee at its discretion.

In other cases where a conflict or the potential for conflict arises, even if there is no supervisory relationship involved, the parties may be separated by reassignment or terminated from employment.

This section shall not apply to ¹the Paid On Call Volunteer Firefighter, Seasonal, and Temporary Employees.

CHAPTER III - General Rules

Section 1. Responsibility

The City Manager or his/her designee shall have the responsibility for administration of the personnel program consistent with the Personnel Ordinance.

Section 2. Hiring Authority

Oversight of individual employees shall be the responsibility of the hiring authority as provided in the Ellsworth City Charter. The hiring authority is that person(s) specifically authorized by the City Charter to hire or appoint the employee.

Section 3. Status

It is the intent of City of Ellsworth to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time.

Personnel status is the category of employment into which an employee falls based upon the method of hire and/or the nature of tenure. The following are the categories of personnel status and their definitions:

Regular Employee:

Has satisfactorily completed the probationary period (only full-time and part-time employees may attain regular status).

¹ Amended August 17, 2009

Probationary Employee:

Hired for an initial/promotional/transferral trial period of six months which may be extended to a maximum of twelve (12) months upon request of the immediate supervisor and/or the decision of the City Manager. During the probationary period the employee may be removed or demoted at any time with or without cause. Such removals or demotions shall not be subject to review or appeal.

Full-time Employee:

Hired to a position requiring regularly scheduled employment for at least thirty-five (35) hours per week.

Part-time Employee:

a. Regular Part Time Employee:

Hired to a position requiring regularly scheduled employment for periods of less than thirty-five (35) hours per week.

b. Intermittent Employee:

Hired to a position, which calls for non-scheduled irregular hours of employment. (Example: reserve police officer)

c. On-Call Intermittent:

Hired to a position, which may be scheduled regularly or irregularly, but calls for intermittent work as needed and is compensated only on a per call basis. (Example: call fire fighter)

d. Seasonal Employee:

Hired to a position established for less than full-year periods and which is expected to be of a regularly recurring nature.

e. Temporary Employee:

Hired for work not to exceed one hundred and eighty (180)² consecutive calendar days or for a particular project with a specified duration of time.

f. Interim Employee:

Hired to a position at the administrative level for the period of time necessary to recruit and appoint a person to fill the vacant position or in the temporary absence of the employee regularly holding the position if the absence is of thirty (30) consecutive calendar days duration or longer.

Any regular full time employee who receives a promotion or a transfer shall be required to serve another probationary period.

² Amended March 16, 2009

Section 4. Classification

To aid in the determination of applicability of the state and federal wage and hour laws each position and/or title within the City government shall be categorized as either exempt or non-exempt. Such classification governs applicability of overtime provisions to the position. It will be the responsibility of the City Manager, in conjunction with the preparation of the position descriptions, to determine exempt or non-exempt status.

Section 5. Position Descriptions

Job specifications for each position in the City employment shall be developed by the hiring authority and shall be periodically updated. These job descriptions shall set forth the following information:

- Job title
- Classification
- Qualifications
- Expected hours
- Responsible to and evaluated by
- Responsibilities
- Duties

Section 6. Evaluation

An evaluation for purposes of this ordinance is the examination and review of job performance for purposes of determining continuation of employment, promotion, demotion or salary adjustment.

All employees shall be evaluated annually no matter what the status. Employees shall be evaluated at the completion of the initial probationary period and once each year thereafter.

A written evaluation shall be prepared by the immediate supervisor in a manner, which the department head shall prescribe. Evaluations shall be conducted by the immediate supervisor in a manner which the supervisor shall prescribe.

Employees shall be afforded the opportunity to review and discuss their written evaluation with their immediate supervisor and shall sign their evaluation as proof of discussion and understanding although they may not necessarily agree with the evaluation. An employee may prepare a written response to any item included in the evaluation. This response shall be submitted to the evaluator and attached to and become part of the evaluation. A copy of the complete evaluation will be provided for the employee and placed in his/her personnel file.

Section 7. Personnel Files

Personnel files are maintained by the City of Ellsworth. In so far as permitted and/or required by law, all personnel records shall be confidential.

During regular business hours an employee may inspect his/her personnel file. Requests to inspect a personnel file shall be made to the City Manager, or his designee. No personnel file shall be removed from the Finance Office. An employee may receive a copy of any document contained within their personnel file upon request.

Section 8.

New Hire Training Requirements: all newly-hired employees shall meet with the Safety Coordinator to schedule their mandatory training required as a new employee as soon as practicable.¹⁰

CHAPTER IV - Compensation

Section 1. Salaries & Wages - General

It is the objective of the City of Ellsworth to pay employees on a basis commensurate with salaries and wages for municipalities of the same approximate size and for comparable private work in the area and that will attract and retain well-qualified and responsible employees. Classification of a position and specific duties and responsibilities of a position as set forth in job descriptions shall be major factors in determining the rate of compensation. A Wage and Salary Schedule shall be prepared and reviewed annually. New employees will usually be hired at the minimum rate for the position as specified in The Wage and Salary Schedule except that in circumstances where qualifications and training indicate, a higher starting rate may be authorized.

In the case of two or more positions and/or titles being held by one employee, the rate of compensation shall be determined by the job requirements of the combination of positions and not by the number of positions. In the event of reorganization or reassignment of duties causing the combination of positions to change, the rate of compensation may be adjusted if necessary or appropriate. In the event of transfers, the current rate as specified in the Wage and Salary Schedule for the new position shall apply unless a higher starting rate is indicated and authorized.

Section 2. Overtime

A non-exempt employee shall be compensated at an hourly wage rate and shall be paid at one and one-half (1½) times their regular hourly rate for all hours worked over forty (40) hours within the regular workweek. Paid holidays, paid leave, and bereavement leave shall not be considered as time worked for the purpose of computing overtime or compensatory time. Law enforcement officers and fire fighters have different workweeks and have provisions for computing overtime eligibility under the Fair Labor Standards Act. Overtime must be authorized in advance by the employee's supervisor. Employees whose positions are classified as exempt are not eligible to receive overtime pay.

Section 3. Compensatory Time

A non-exempt regular full time employee may be compensated with one (1) hour of compensatory time for each hour worked in excess of their regularly scheduled workweek up to forty (40) hours and one and one-half hour (1½) for work in excess of forty hours per week. Such work shall require the prior approval of the City Manager or designee. Such compensatory time shall be recorded and may be taken at the time of the employee's choice provided it does not interfere with the operational needs of the department or office and has been approved by the City Manager or designee. No employee shall be allowed to accumulate more than one (1) weeks normally scheduled hours of compensatory time³; beyond that, any overtime will be compensated at time and ½ rates pursuant to the overtime policy. Upon separation of employment the employee will be compensated for any earned and unused compensatory time.

Section 4. Salary Increases

All employees may be eligible for a merit increase and/or a market adjustment if deserving every 3 years from their anniversary date. The merit increase amount if eligible will be between 0 and 5%, at the discretion of the Department Head, and approval of the City Manager for non-exempt employees, and at the discretion of the City Manager and approval of the Council for exempt employees and or Department

³ Amended 9/15/2008

¹⁰ Amended June 20, 2011

Heads. Any merit increases for the City Manager will be at the discretion of the Council. Also every 3rd year from the anniversary date the position in question will be studied to see if a market adjustment is required. No employee shall receive more than 1 merit raise within a 3 year period, except during the implementation of this policy. All merit and/or market adjustments are dependent on the financial status of the City.

Section 5. Expense Reimbursement

1. Mileage/Tolls/Parking – City-owned or rental vehicles provided by the City will be made available to employees needing to travel on City business. Employees provided the use of a city-owned vehicle or a vehicle rented to the City will not receive mileage allowances. In the event a rental vehicle is available to an employee but the employee chooses instead to utilize his/her personal vehicle, mileage reimbursement will be permitted only up to an amount equal to the cost to the City of the rental vehicle. In the event no rental vehicle is available and an employee uses his/her personal vehicle, the employee will be reimbursed for mileage based on the actual mileage necessary. The reimbursement amount is not to exceed the maximum reimbursement allowed under the IRS regulations, and will be reviewed annually during the budget process. Use of an employee's personal vehicle must be previously authorized by the hiring authority or designee. Tolls and parking fees shall be reimbursed upon submittal of a receipt.

2. Meals/Lodging – Employees shall be entitled to reimbursement for meals in a reasonable amount and reasonable expenses for lodging provided those expenses are necessitated directly by the performance of duties as a City employee. Reimbursement applies only to the City employee. The maximum reimbursement for breakfast is \$10.00; the maximum reimbursement for lunch is \$15.00; and the maximum reimbursement for dinner is \$20.00. No reimbursements will be made without an itemized receipt demonstrating the actual amount spent. No expenses for alcoholic beverages will be reimbursed. All reimbursement requests must receive approval from the employee's supervisor.

3. Telephone - Reimbursement for telephone toll charges incurred in the conduct of City business as long as such toll calls were not able to have been made during the regular work day and/or on regular business telephones, shall be made to any employee. Such reimbursements shall be only as authorized by the employee's supervisor.

5. Training - The City Council believes that both the City and its employees benefit from training and educational opportunities.

Employees required or approved to attend seminars or training courses may be eligible for expenses incurred for same. Should such training occur during normal working hours, the employee may also be eligible for regular salary or wages for the duration of the training. Eligibility for such training expenses shall be determined by the individual's department head.

Following completion of any seminar or training course, the employee must submit proof of expenses accompanied by approval of the department head in order that payment may be effected.

An employee may receive an "advance" of expenses provided departmental approval is received and application for same is made to the City Manager or his/her designee. Any unused portion of the advance and all coinciding receipts must be turned into the Treasurer's Office within one week after the training session or seminar.

Upon recommendation of the department head and approval of the hiring authority, employees may take college level work-related courses or may pursue specialized training relevant to the employee's position with the City. The City will reimburse up to 100% of the cost of tuition, fees, books, and materials. Reimbursement will be made upon successful completion of the course and/or training and maintenance

of at least a “C” grade. Prior approval of the hiring authority is required to take courses/training during the regular workday.

Payment by the City for such courses/training is considered to be a loan to the employee. The employee will be required to sign a loan agreement for the amount of the loan. An employee voluntarily terminating employment with the City will be required to reimburse the City for college course/training expenses previously paid to them as follows:

Within one year of course/training completion	100%
After one year but before two years	75%
After two years but before three years	50%
After three years but before four years	25%

CHAPTER V - Employee Benefits

Eligible employees at the City of Ellsworth are provided a wide range of benefits. A number of the programs (such as Social Security, workers' compensation, and unemployment insurance) cover all employees in the manner prescribed by law.

Benefits eligibility is dependent upon a variety of factors, including employee classification. Your supervisor can identify the programs for which you are eligible.

Part 1. Cafeteria Plan

The purpose of the cafeteria plan for employee benefits is to provide City employees with the opportunity to select the benefit package that best meets their needs.

Section 1. Cafeteria Plan Regulations

1. Each employee has a certain number of credits based on the years of full time employment with the City of Ellsworth. Credit levels will increase as of the employee's service date.
2. On the employee's annual date of full time service with the City (anniversary date) each employee shall select the desired level of employee benefits applicable to their needs with their credits. This selection may not be changed during the ensuing year except for significant life changes such as births, deaths, marital situations, or spousal employment situations. Unused credits are not carried forward from year to year.
3. The following benefits are provided by the City and are not subject to the Cafeteria Plan: holidays, bereavement leave, jury duty, and military duty. Workers' Compensation, unpaid leaves of absence and family and medical leave in accordance with the Family and Medical Leave Policy are also outside the Cafeteria Plan. However leaves taken under these policies may impact Cafeteria Plan benefits. See the appropriate policy for details.
4. Department Heads that are new hires previously employed by an entity other than the City of Ellsworth shall be assigned credit levels as delineated in section 2.
5. Regular part time employees who are assigned a regular schedule of at least twenty (20) hours per week shall be eligible for pro-rated credits based on their regular weekly hours of work divided by forty. Temporary, seasonal, and intermittent employees shall be ineligible for credits. Employees going from part time to full time shall accrue credits based on their full time employment anniversary date.

6. Partial credits may be used to purchase additional Medical Services Reimbursement, ⁴up to the maximum amount available; for example: .25 credits left, employee can purchase \$25 of medical services account.

7. Any employee who wishes to discontinue an allowable benefit may do so at any time upon written request to the Deputy Treasurer. Any credits expended to secure the discontinued benefit will not be refunded. The credits may not be reallocated until the employee's anniversary date.⁵

Section 2. Credit Accruals

Years of Service	Non-Dept. Heads	Dept. Heads
Start	8 Credits	15 Credits
After 6 Months	11 Credits	
After 1 Year	13 Credits	16 Credits
After 3 Years	15 Credits	
After 5 Years	17 Credits	17 Credits
After 10 Years	19 Credits	19 Credits
After 15 Years	21 Credits	21 Credits
After 20 Years	22 Credits	22 Credits
After 25 Years	23 Credits	23 Credits
After 30 Years	24 Credits	24 Credits
After 35 Years	25 Credits	25 Credits

Section 3. Health Insurance

Level 1 -POS Plan-Individual 100% Family Plan 0%	6 Credits
Level 2 - Employee & Children 100% Family Plan 50%	8 Credits
Level 3 - Family Plan 100%	11 Credits

Explanation of Benefits and Benefit Limitations:

1. Level 2 - Family Plan 50% means the City will pay 50% of the difference in cost between the Individual Plan and the Family Plan.
2. Family Plan is for legally married spouses or domestic partners as defined by the insurance policy.

Section 4. Medical Services Account

Level 1	\$200 City Contribution	1 Credit
Level 2	\$300 City Contribution	2 Credits
Level 3	\$400 City Contribution	3 Credits
Level 4	\$500 City Contribution	4 Credits
Level 5	\$600 City Contribution	5 Credits

⁴ Amended August 17, 2009

⁵ Added March 16, 2009

Explanation of Benefits and Benefit Limitations:

1. The City contribution to the medical services account may be used to reimburse the employee for medical, dental, and optical service costs not covered by the City's health insurance plan. This would include reimbursement for deductibles and co-shares under health insurance plans, prescribed eyeglasses, dental/orthodontic treatments, services, and hardware, medical equipment prescribed by a physician, but not covered by health insurance. The account can also be used to pay for the employee's share of psychiatric, counseling or other mental health services.
2. The medical services account cannot be used to reimburse for travel or travel related medical expenses (hotels, mileage, meals, tolls, parking, airline tickets, etc.). The account can be used to reimburse for prescription drugs, but not for non-prescribed medical, dental, or optical equipment. The account cannot be used to pay the employee's share of health insurance premium.
3. The funds in the medical services account are not cumulative. The costs for which reimbursement is sought have to have been incurred prior to the employee's anniversary date. Any funds remaining shall revert to the City.

Section 5. Fitness Club Memberships

Level 1	\$200 City Contribution	1 Credit
Level 2	\$300 City Contribution	2 Credits
Level 3	\$400 City Contribution	3 Credits

Section 6. Life Insurance

Level 1 - 1 X Salary	.25 Credits
Level 2 - 2 X Salary	.50 Credits
Level 3 - 3 X Salary	.75 Credits

Explanation of Benefits and Benefit Limitations:

1. Employees enrolled in the City's health insurance program will automatically be covered by a life insurance policy equal to one time's salary.

Section 7. Income Protection Plan (short-term disability)

Level 1 - 40% of Salary/Wages	.25 Credits
Level 2 - 55% of Salary/Wages	.50 Credits
Level 3 - 70% of Salary/Wages	.75 Credits

Section 8. Retirement - City Contribution to Maine State Retirement and Deferred Compensation Plan

ICMA

Level 1 - 2% of Salary/Wages	1 Credit
Level 2 - 4% of Salary/Wages	2 Credits
Level 3 - 6% of Salary/Wages and	3 Credits
Level 4 - 8% of Salary/Wages and	4 Credits

MSR

Plan A	3 Credits
Plan 4	4 Credits

Explanation of Benefits and Benefit Limitations:

1. Employees enrolled in Maine State Retirement Regular Plan A may use credits to participate in the deferred compensation plan up to Level 1.
2. Employees enrolled in the deferred compensation plan shall be required to match the city contribution.
3. Current employees who enroll in a retirement plan after 7/1/97 shall be required, at the time of enrollment in the Cafeteria Plan, to continue participation in the deferred compensation plan or MSR for at least three years, or lose the equivalent credits.
4. Employer contributions to the deferred compensation plan are vested to an employee after five years of uninterrupted service with the City.

Section 9. Paid Leave

Level - Basic	5 days	1 Credit (Starting Employees Only)
Level 1	10 days	2 Credits
Level 2	15 days	3 Credits
Level 3	20 days	4 Credits
Level 4	25 days	5 Credits
Level 5	30 days	6 Credits
Level 6	35 days	7 Credits

Explanation of Benefits and Benefit Limitations:

1. Paid leave is provided in lieu of sick leave, vacation, or personal days.
2. Paid leave is cumulative from year to year to a maximum of 60 days, not including any new paid leave days acquired on the employee's anniversary date.
3. City will pay compensation equal to cumulative paid leave upon separation.
4. Employees may select only Level Basic during their first six months of employment, however, the paid leave does not accrue unless and until the employee successfully completes the probationary period.¹¹ After six months of employment, an employee may move to Level 1, purchasing an additional 5 days
5. Employees may not increase Paid Leave more than two levels on their anniversary date. This shall not apply to employees who have a significant life change event as defined in subsection 3 in Section 1 Cafeteria Plan Regulations.
6. Sick Leave Accumulated prior to cafeteria plan implementation: The employee may keep the sick leave accumulation and use it strictly for their own personal illness or injury or if it is necessary for the employee to provide care for an employee's child, spouse, or parent. . At the time of separation from service employees that are immediately eligible for benefits under the Maine State Retirement System or other City adopted qualified Retirement Plan, shall receive a cash benefit equal to the wage equivalent of 50% of their remaining sick leave accumulation.
7. Use of paid leave. Paid time may be taken at any time during the year except that it must be scheduled in advance to avoid conflicts with other employees' paid time and subject to workload demands. The employee's Department Head must approve paid time off at least seven days prior to the anticipated time off. In emergency situations, the Department Head may waive the seven-day advance approval. Paid time may not be taken during the employee's probationary period.

8. Transfer of Accrued Leave. The purpose of this policy is to establish a procedure by which full-time employees may voluntarily transfer accrued unused paid time to other full-time employees who meet the criteria outlined in this policy and who have expended their own accrued paid time off due to catastrophic illness or injury or other qualifying drastic circumstances as determined by the City Manager, in accordance with the following procedures and limitations:

- a. The request for such leave may be made by the employee seeking the leave or by any person on that employee's behalf. The request must be made in writing to the Department Head for the receiving employee. If the request is submitted by someone other than the receiving employee, that employee's consent must be given before the request will be processed.

¹¹ Amended June 20, 2011

- b. When the receiving employee has completed at least one year of employment with the City and has exhausted all of his/her own accrued leave time, other City employees may transfer to that person a maximum of 40 hours each, up to a total of 160 hours, in any 12 month period measured backward from the date the receiving employee uses the time.
- c. Leave time must be donated in whole hour increments with a 10-hour minimum.
- d. Leave time may be transferred only in the event of the receiving employee's own catastrophic illness or injury or a catastrophic illness or injury of an immediate family member. Immediate family member for purposes of this section is defined as spouse, parent, parent-in-law, child, stepchild, or domestic partner. When requested, the receiving employee must provide medical or other sufficient documentation of the need for the leave.
- e. This policy does not apply to employees out of work for work-related illness or injury covered by workers' compensation.
¹¹ Amended June 20, 2011
- f. Any transfer of paid time by the transferring employee must be completely voluntary. No employee shall be coerced, threatened, intimidated or financially induced into donating time under this policy.
- g. While an employee is on shared leave, he/she will continue to be classified as a City employee and shall receive the same compensation and benefits he/she would otherwise receive if using his/her own accrued time.
- h. The Finance Department is responsible for computing the values of donated leave and for adjusting the accrued leave balances to show the transferred leave. The receiving employee shall be paid his/her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the receiving employee's salary. The dollar value of the leave is converted from the donor to the recipient. Records of all leave transferred will be maintained and the value of any leave transferred which remains unused will be returned at its original value to the employee or employees who donated the leave.
- i. Inappropriate use of this policy may result in the cancellation of the donated leave or use of shared leave. In no event will any unused shared leave be paid to the receiving employee in the event that person leaves employment with the City.
- j. The City of Ellsworth, in its sole discretion, may cancel this program at any time.

Part 2: Other Employee Benefits

Section 1. Worker's Compensation

The City of Ellsworth provides a comprehensive workers' compensation insurance program at no cost to employees. This program covers any injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides incapacity benefits after a short waiting period or, if the employee is hospitalized, immediately. For a compensable injury resulting in lost time, payment of incapacity benefits is made by the City's insurance carrier in lieu of the employee's regular salary.

The City of Ellsworth may initially send an injured employee to a physician of the City's choice. The appointing authority may also require a return-to-work medical evaluation to determine if an employee who has been out of work is able to perform the essential functions of the employee's position with or without reasonable accommodation in such a manner that would not pose a direct threat to health and safety of the employee or others.

⁶If an employee is out of work due to incapacity resulting from an accepted Workers Compensation claim, while the employee is receiving Workers Compensation incapacity benefits the City will pay for any City benefits the employee was paying for at the time of injury. Also the City will continue to contribute to the employee's retirement plan at the usual match for the regularly scheduled work hours as long as the employee is unable to work due to an accepted Worker's Compensation injury and has not returned to work in any manner. The City will pay for these benefits for a period no longer than 6 months. This policy will be retroactive to any employee out on Worker's Compensation and receiving payments as of July 1, 2009. If for any reason other than incapacity due to the injury in question, the employee does not return to work, the employee agrees to reimburse the City the full amount of benefits paid by the City on the employee's behalf under this paragraph.

Employees who sustain work-related injuries or illnesses should inform their supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible.

Section 2. Social Security

All employees shall contribute to the Social Security System on a cost sharing basis with the City. Contributions of the employee shall be made through payroll deductions. The percentage of premium is periodically subject to change by Federal law and increases in deductions shall be automatic.

Section 3. Holidays

Regular full-time and regular part-time employees shall be entitled to paid holidays' and the concurrent provisions of this section. Compensation for full-time employees shall be based on their regular workday. Compensation for regular part-time employees shall be pro-rated based on average hours. Paid holidays shall be as follows:

- New Year's Day (January 1)
- Martin Luther King, Jr. Day (third Monday in January)
- Presidents' Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)

⁶ Amended August 17, 2009

Columbus Day (second Monday in October)
Veterans' Day (November 11)
Thanksgiving (fourth Thursday in November)
Day after Thanksgiving
Christmas (December 25)
Floating Holiday

The Floating Holiday is based on the calendar year and cannot be accumulated. An employee must provide one week notice to his/her Department Head of the intent to use a floating holiday and must receive permission from the Department Head to do so.

If an eligible hourly employee works on a recognized holiday at the request of the City, he or she will be paid holiday pay plus wages at one and one-half times their straight-time rate for the hours worked on the holiday.

In the case of the salaried employee who works on a regular holiday, compensatory time shall be granted equal to the time worked on the holiday.

Initial probationary employees shall not be entitled to paid holidays until after they have completed at least thirty (30) calendar days employment prior to the holiday.

A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on a Sunday will be observed on the following Monday.

If a recognized holiday falls during an eligible employee's paid absence (such as paid leave), holiday pay will be provided instead of the paid time off benefit that would otherwise have applied.

Paid time off for holidays will not be counted as hours worked for the purposes of determining whether overtime pay is owed.

Section 4. Court Service

The City of Ellsworth encourages employees to fulfill their civic responsibilities by serving jury duty when required.

Employees called to perform jury service shall be granted leave to do so and shall be paid their regular salary for a period of up to 160 hours. Such employees shall turn over any earnings received from such appearances (other than for mileage reimbursement) to the City Treasurer. Where contractual agreement has otherwise provided for court service compensation for certain employees, this provision shall not apply and shall not be deemed to be inconsistent with such contractual agreement.

Employees must show the jury duty summons to their supervisor as soon as possible so that the supervisor may make arrangements to accommodate their absence. Employees are expected to report for work whenever the court schedule permits.

The City of Ellsworth will continue to provide health insurance benefits for the full term of the jury duty absence. Employees will be eligible for paid holidays during jury duty leave.

Section 5. Bereavement Leave

Employees shall be granted up to three (3) consecutive workdays from the date of death, with pay, for absence resulting from the death of a member of the immediate family. Immediate family shall mean the

spouse or domestic partner, the parents of the spouse, and the parents, stepparents, guardian, children, stepchildren, brothers, sisters, wards, grandparents and grandchildren of the employee. Up to One (1) day with pay may be granted by the City Manager or, in the case of library employees the Library Director, in situations involving any other death for attendance at the funeral.

Section 6. Military Duty Leave

The City of Ellsworth complies with state and federal military leave laws. Any individual with questions about such leave should direct them to their supervisor or Department Head.

Section 7. Special Leave For Emergency Service

Any employee of the City who wishes to participate as a volunteer for the City Fire Department shall be allowed to be "on call" during normal working hours provided prior arrangements have been made with the City Manager to insure that primary job requirements are met. There shall be no reduction in salary or wages for response to such emergency calls provided there is no additional compensation received for such calls.

Section 8. Family and Medical Leave

In accordance with the federal Family and Medical Leave Act, The City of Ellsworth will grant job protected unpaid family and medical leave to eligible employees for up to twelve (12) weeks per twelve (12) month period for any one or more of the following reasons:

1. The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care (leave taken for this reason must be taken within the 12-month period following the child's birth or placement with the employee); or
2. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition; or
3. The employee's own serious health condition that makes the employee unable to perform the functions of his/her, position.

Definitions

12 Month Period - means a rolling 12 month period measured backward from the date the leave is taken and continuous with each additional leave day taken.

Spouse - includes unmarried domestic partners. If both parties work for the City of Ellsworth their total leave in any 12 month period may be limited to an aggregate of 12 weeks if the leave is taken for either a birth, placement for adoption or foster care of a child, or to care for a sick parent.

Child - means a child either under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child includes a biological, adopted, foster, or stepchild.

Serious Health Condition, - means an illness, injury, impairment, or a physical or mental condition as defined by federal law. This may include a condition that involves inpatient care;

any period of incapacity requiring absence from work for more than (3) three calendar days and that involves continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is incurable, or which if left untreated, would likely result in a period of incapacity of more than three (3) calendar days; or prenatal care by a health care provider.

Coverage and Eligibility

To be eligible for federal family/medical leave an employee must:

1. Have worked for the City of Ellsworth for at least twelve (12) months, and
2. Have worked at least 1250 hours during the 12 month period immediately preceding the commencement of the leave.

Intermittent or Reduced Leave

A. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee when "medically necessary."

1. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
2. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.

B. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child with the employer's consent.

Substitution of Paid Leave and Other Paid Time

A. As permitted by law, an employee will be required to substitute accrued paid leave and compensatory time for family/medical leave taken. Any leave taken up to the total of 12 weeks permitted by law following use of accrued time off will be unpaid.

Notice Requirement

A. An employee is required to give thirty (30) days notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form (see attached) must be completed by the employee and returned to the City Manager at the City Manager's Office. In unexpected or unforeseeable situations, an employee must provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a completed "Request for Family Medical Leave" form.

B. If an employee fails to give thirty (30) days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until thirty (30) days after the employee provides notice.

Medical Certification

A. For leave taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form (see attached) and return the certification to the City Manager at the City Manager's Office. Medical certification must be provided by the employee within fifteen (15) days after requested, or as soon as is reasonably possible.

B. The City of Ellsworth may require a second or third opinion (at its own expense), periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work.

C. All documentation related to the employee's or his/her family members' medical condition will be held in strict confidence.

Effect on Benefits

A. An employee granted leave under this policy will continue to be covered under the City of Ellsworth health insurance, life insurance or income protection disability plan under the same conditions as coverage would have been provided if they had been continuously employed during the leave period.

B. Employee contributions, as appropriate, will be required either through payroll deduction or by direct payment to the Deputy Treasurer. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to change in rates that occur while the employee is on leave.

C. If an employee's contribution is more than thirty (30) days late, the City of Ellsworth may terminate the employee's insurance coverage.

D. If the City of Ellsworth pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the Employer for delinquent payment (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.

E. If the employee fails to return from unpaid family/medical leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member, or (2) circumstances beyond the employee's control (certification required within thirty (30) days of failure to return for either reason), the City of Ellsworth may seek reimbursement from the employee for the portion of the premiums paid by the City of Ellsworth on behalf of the employee (also known as the employer contribution) during the period of leave.

F. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave but will not lose anything accrued prior to leave.

Job Protection

A. If the employee returns to work before or at the conclusion of the permitted 12 weeks of leave permitted under federal law, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status, and authority.

B. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

C. If the employee fails or is unable to return to his or her regular position at the conclusion of the available FMLA time, the employee will be reinstated to his/her same or similar position, only if

available, in accordance with applicable laws. If the employee's same or similar position is not available, the employee may be terminated.

State Family Medical Leave

In some circumstances, employees may be eligible for FMLA leave time under state law instead of or in addition to federal law. State law permits an eligible employee to take up to 10 weeks of unpaid leave during a 2 year period. In order to qualify for state FMLA leave, an employee must have worked for The City for at least 12 consecutive months prior to the need for the leave.

Leave under the state FMLA is available for the following reasons:

- A serious health condition of the employee;
- The birth of the employee's child or the employee's domestic partner's child;
- The placement of a child age 16 or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner;
- A spouse, domestic partner, child, domestic partner's child, or parent with a serious health condition;
- The donation of an organ of the employee for a human organ transplant; or,
- The death or serious health condition of the employee's spouse, domestic partner, parent, or child if the spouse, domestic partner, parent or child as a member of the state military forces, or the US Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.

Many of the same provisions regarding the application of the federal FMLA detailed above also apply to leave under the state law. If an employee believes he/she qualifies for leave for one of these conditions, he/she should speak to his/her supervisor or Department Head immediately as to specific rights and obligations under state law.

Family/Medical Leave Forms to Be Submitted by the Employee

1. Request for Family/Medical Leave
2. Physician or Practitioner Certification Family Member/Serious Health Condition (2A)
Employee Serious/Health Condition (2B)
3. Authorization for Payroll Deduction for Benefit Plan Coverage Continuation During a Family Medical Leave of Absence
4. Fitness for Duty to Return From Leave

Section 10. Other Unpaid Leave of Absence

A regular employee who needs an absence for work for a reason other than those covered elsewhere in this ordinance may be granted a leave of absence without pay by the City Manager upon recommendation of the Department Head. The maximum leave granted is 180 days.

An employee desiring such time off must apply in writing to the Department Head at least one week in advance of the requested leave time. The request must specifically state the reasons for such leave and the length of time requested. Such requests will be determined on an individual basis by the City Manager, at the recommendation of the Department Head.

An employee must have completed six months of continuous service before the effective date of the leave of absence. The employee must exhaust any accrued leave at the inception of the leave of absence.

If such leave is granted, the employee will maintain any benefits and/or service accrued through the date of the inception of the leave but no benefits shall accrue during the absence nor shall the employee be eligible for other city-paid benefits during the absence. For instance, holidays falling within the leave of absence shall be unpaid. Upon completion of such a leave of absence, the employee may be able to return to their regular position if that position is still available and suitable. In the event that the position has been abolished or reassigned in their absence or is otherwise no longer available or suitable, the employee shall be given a position of equal classification, status and salary if such position is available. If no such positions are available, the employee may apply for any other job that is vacant and for which the employee is qualified for. If no such positions exist or if the employee is not the best candidate for such position, the employee's employment may be terminated.

If an employee on an unpaid leave of absence from the City starts a business, operates a business, undertakes a new career, or engages in similar activity, the leave will be terminated and the employee may be terminated from employment.

The granting or denial of a leave of absence shall be solely within the discretion of the hiring authority and shall not be subject to the grievance procedure.

CHAPTER VI - Work Week and Wage Administration

Section 1. Hours of Work

The hours of the regular workweek for regular full-time and regular part-time employees shall be as prescribed by individual departmental requirements and/or as called for by the job description(s) for the position(s). Exempt employees shall accomplish the work assigned to them regardless of the hours required to do the work.

Notwithstanding any other provisions of this ordinance the hiring authority reserves the right to alter, amend and/or otherwise determine the hours of work in any and all departments where it deems it necessary.

Section 2. Records of Hours Worked

Accurately recording time worked is the responsibility of every hourly employee. Federal and state laws require The City of Ellsworth to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties.

Hourly employees should accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons. Overtime work must always be approved before it is performed.

Altering, falsifying, tampering with time records, or recording time on another employee's time record may result in disciplinary action, up to and including termination of employment.

It is the employees' responsibility to sign their time records to certify the accuracy of all time recorded. The supervisor will review and then initial the time record before submitting it for payroll processing. In addition, if corrections or modifications are made to the time record, both the employee and the supervisor must verify the accuracy of the changes by initialing the time record.

Section 3. Paydays

All employees are paid weekly on Friday. Each paycheck will include earnings for all work performed through the end of the previous payroll period.

In the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

If a regular payday falls during an employee's paid time off, the employee may receive his or her earned wages before departing if a written request is submitted at least one week prior to the departure.

Employees may have pay directly deposited into their bank accounts if they provide advance written authorization to the City of Ellsworth. Employees will receive an itemized statement of wages when the City of Ellsworth makes direct deposits.

CHAPTER VII - Changes in Status

Section 1. Seniority

Seniority, for purposes of this Ordinance, shall mean length of continuous service in a particular status within a particular department and may be the governing factor in all matters of shift assignments, layoffs, recall, vacation preference or overtime work provided all other qualifications are equal. Probationary employees shall not be afforded any seniority. Once the probationary period is completed, seniority shall be retroactive to the date of initial hire. The seniority rules apply to regular full-time employees only. A break in service shall only be caused by resignation, dismissal, retirement or failure to report for work within five (5) workdays of being recalled from layoff. Transfer or promotion to another department will not constitute a loss of seniority. Demotion, for any reason, shall not constitute a loss of seniority.

Seniority lists shall be established and maintained for each department by the department head or their designee.

Section 2. Promotion Policy

The City encourages employees to develop skills, attain greater knowledge of their work and make known their qualifications for promotion to more responsible positions. No department head shall deny an employee permission to apply for a promotional opportunity in any City department but no such promotion is guaranteed. When the hiring authority determines that an insufficient number of well-qualified employees are available from within the City's ranks, he/she may consider outside applicants along with employees in order to provide an adequate number of candidates for consideration.

Section 3. Standards for Promotion

The hiring authority shall apply the following standards with respect to promotions and the filling of job vacancies within the City service: The job-related skills, knowledge, ability, experience, education and past performance which will contribute to the satisfactory performance of duties of the position.

Section 4. Demotion

An employee may be demoted to a lower position for which he/she is qualified for any of the following reasons:

- A. When an employee would otherwise be laid off because his position is being abolished, lack of work, a cut-back in City personnel due to the City's financial condition or because of the return to work from authorized leave of another employee to such position in accordance with these rules (leave of absence).
- B. When an employee does not possess the necessary qualifications to render satisfactory service in the position he holds. A demotion under this provision shall be rendered pursuant to the procedures contained in Chapter VIII.
- C. When an employee does not render satisfactory service after being advised of his shortcomings and given ample opportunity to improve his performance. A demotion under this provision shall be rendered pursuant to the procedures contained in Chapter VIII.
- D. When an employee voluntarily requests such demotion.

Section 5. Resignation

An employee may resign from the City service in good standing by submitting in writing the reasons thereof and the effective date to the hiring authority at least fourteen (14) calendar days in advance. The hiring authority may permit a shorter period of notice if extenuating circumstances exist. The resignation shall be accompanied by a statement by the department head as to the resigned employee's service performance and pertinent information concerning the cause of resignation. Failure to comply with this rule may be cause for denying future employment with the City.

Section 6. Layoffs

Any employee may be laid off by the City whenever it is necessary because of a shortage of funds, lack of work, or related reasons, which do not reflect discredit upon the employee. Work record and seniority in each particular case shall be the basis for determining layoffs. If rehired within two years of the date of layoff, the employee will retain all accrued benefits.

Section 7. Unapproved Absences

An employee absent from work for five (5) consecutive days without approval shall be deemed to have resigned after written notice, by the hiring authority, to the employee (or to the employee's last known address).

Section 8. Severance Pay

The City will pay severance pay equal to two (2) weeks of regular compensation, in addition to accumulated paid leave to employees leaving service for the following reasons;

- a. retirement from service provided employee is immediately eligible for benefits under the Maine State Retirement System or other City adopted qualified Retirement Plan,
- b. layoff,
- c. death of the employee (payment will be made to the employee's estate).

⁷If an employee retires from service, and then decides to return to active employment, as far as the City is concerned that employee will start again as a NEW hire, with the wage and benefits of a new hire, with no seniority. The time previously employed may count towards FMLA eligibility or as otherwise required by law. The employee retiring must also follow any rules that the retirement plan they contribute to requires. For example, re-hire date, benefit eligibility etc.

CHAPTER VIII Disciplinary Action and Grievance Procedure

Section 1. Disciplinary Action

Disciplinary action will be handled in accordance with the procedures set forth herein. Nothing in this Chapter shall limit the City of Ellsworth's right to suspend or discharge a probationary employee during the employee's probationary period with or without cause.

A. Levels of Discipline

The City of Ellsworth subscribes to the concept of "progressive discipline." Under normal circumstances, instances of minor misconduct or poor performance will result in oral or written reprimands. Subsequent misconduct or poor performance by the same employee may result in increasing levels of disciplinary severity, including suspension and ultimately discharge. Notwithstanding the policy of progressive discipline, the City of Ellsworth may issue discipline at whatever level of discipline it deems appropriate to the circumstance, including, for example, termination for a significant single instance of misconduct. Possible disciplinary actions include the following:

- i. Oral Reprimand
- ii. Written Reprimand
- iii. Suspension Without Pay
- iv. Dismissal

Informal counseling shall not be considered discipline and is not subject to this section.

B. Procedure

Whenever a department head has cause to believe that disciplinary action may be appropriate, the department head shall give reasonable notification to the employee

⁷ Amended August 17, 2009

concerned of the time and place of a disciplinary hearing. If appropriate, an employee may be placed on paid administrative leave pending the disciplinary hearing.

The purpose of the disciplinary hearing is to inform the employee of the facts that are believed to warrant possible disciplinary action and to give the employee the opportunity to respond.

If the department head determines that discipline is warranted, the department head shall determine the appropriate level of discipline. A department head may issue an oral reprimand, written reprimand, or suspension of up to five (5) days, or may recommend dismissal to the City Manager, or his or her designee.

- i. If an oral reprimand is warranted, the department head shall document the oral reprimand with a “counseling memo” placed in the employee’s personnel file.
- ii. If a written reprimand is warranted, the department head shall prepare the written reprimand, review it with the employee, have the employee sign it (to acknowledge that the employee has received and reviewed the reprimand, even if the employee disagrees with the reprimand), and place it in the employee’s personnel file.
- iii. If a suspension without pay is warranted, the department head shall prepare a memorandum to be placed in the employee’s personnel file and shall designate on which days the suspension will be served. The department head may allow the suspension to be served as a block or as individual days over the course of a number of weeks.
- iv. If a department head recommends termination, the City Manager, or his or her designee, shall review the matter and determine whether termination is appropriate, and either terminates the employee’s employment or institute some lesser form of discipline, as the City Manager deems appropriate.

An employee who receives disciplinary action may grieve the action taken within five (5) work days as provided in section 2, below, except that a grievance of disciplinary action shall begin at Step 2 for non-termination discipline or Step 3 for cases of termination. The disciplinary action shall be stayed pending outcome of the grievance.

C. Causes for Discipline

Causes for disciplinary action include, but are not limited to:

- i. Misconduct, indolence, or insubordination, such as failure to obey a department rule or lawful and reasonable direction from a supervisor;
- ii. Inefficiency, incompetence, or unsatisfactory work performance;
- iii. Excessive absenteeism, tardiness, or early departure from work;

- iv. Misuse of sick time;
- v. Malfeasance or conviction of any criminal offense;
- vi. Violation of Personnel Rules, Chapter IX, Conduct of Employees;
- vii. Violation of the Code of Ethics;
- viii. Finding by a Court of a violation of any other City ordinance;
- ix. Engaging in off-duty employment or other activity that is incompatible with the employee's duties, functions, and responsibilities as a City employee;
- x. Engaging in physical violence or threatening violence;
- xi. Failure to maintain a polite and cooperative attitude; and
- xii. Any other action that reflects poorly on or negatively impacts the City of Ellsworth.

Section 2. Grievance Procedure

Any regular full-time and regular part-time employee shall have the right to present a grievance in any matter, which directly affects his/her condition of employment according to the following procedure:

Step 1:

The grievance shall first be discussed with the employee's department head. The department head shall then take such steps as are advisable, including consultation with the employee's immediate supervisor in an effort to resolve the grievance informally.

Step 2:

If the grievance is not resolved within five (5) workdays of initial discussion in Step 1, the grievance may then be submitted in writing to the City Manager who shall provide the employee with a decision in writing within five (5) workdays of submission.

Step 3:

If the grievance is not resolved within five (5) workdays after the receipt of the written decision from the City Manager at Step 2, the grievance, if it involves a matter of policy or termination of employment, may then be submitted in writing to the City Council. The City Council, or a sub-committee of the Council established to hear the grievance, shall call and conduct a hearing of all parties involved within thirty (30) days after submission. The City Council, or subcommittee, shall provide the employee with a written decision within ten (10) workdays of the hearing.

CHAPTER IX - Conduct of Employees

Section 1. General

Employees are expected to conduct themselves at all time during their hours of employment in a manner that will bring no discredit to the City. All employees of the City are expected and required to treat the public with promptness, patience, courtesy and respect. Information about members of the public, gained from their positions, is to be considered confidential.

Section 2. Compliance with Federal, State, and Local Laws

Employees of the City shall comply with all federal, state, and local laws and regulations. Failure to comply may result in disciplinary action.

Section 3. Departmental Rules, Regulations, and Standard Operating Procedures

Written departmental regulations will supplement this ordinance and will be binding on the employees of the individual departments. In case of conflict between this ordinance and the departmental regulations, the more restrictive wording shall take precedence.

This section shall not apply to employees otherwise provided for by contractual agreement and shall not be deemed to be inconsistent therewith.

Section 4. Working Relationships and Interdepartmental Cooperation

Employees of the City shall maintain high standards of cooperation, efficiency, and economy in their work. City employees shall cooperate with the public and employees in other City departments to the fullest extent practical. Department heads and supervisors shall organize and direct the work of their work units so as to achieve these objectives.

Under emergency situations, when an employee's supervisor or department head is not available, the employee shall perform such duties as shall be assigned by the department head or designee present or overseeing the emergency situation.

Section 5. Attendance at Work

Employees shall be at their respective places of work in accordance with the general or departmental regulations pertaining to hours of work. In the event of necessary absences because of illness or any other cause, it is the responsibility of the employees to notify the department supervisor prior to the time the employee is required to report for work.

All departments shall furnish periodic work, attendance, and request for leave reports, as the City Manager shall request.

Section 6. Inclement Weather and Emergency Closings

It is the employee's responsibility to arrive at work on time even during periods of inclement weather. Infrequent instances of tardiness of less than one hour, due to weather conditions, may be excused by the department head without loss of pay.

At times, emergencies such as severe weather, fires, power failures, or earthquakes, can disrupt City operations. In appropriate cases, determined by the City Manager, circumstances may require the closing of City Hall. When operations are officially closed due to emergency conditions, the time off from scheduled work will be paid.

Section 7. Rest and Meal Periods

Each workday, full-time hourly employees are provided with two paid rest periods of fifteen (15) minutes in length. To the extent possible, rest periods will be provided in the middle of work periods. Since this time is counted and paid as time worked, employees shall be absent from their workstations only for the allotted rest period time.

All full-time employees are provided with one unpaid meal period each workday. Department Heads will schedule meal periods to accommodate operating requirements. Employees will be relieved of all municipal duties during meal periods. In the event that a situation occurs requiring the employee to go back on duty, the meal period may be resumed later for the remaining meal period time.

Section 8. Strikes and Slowdowns

No municipal employee of any status may participate in a work stoppage, sympathy work stoppage or slowdown.

Any employee, who instigates, promotes, sponsors, or engages in a work stoppage, sympathy work stoppage or slowdown may be subject to disciplinary action, up to and including dismissal.

Section 9. Outside Employment

Employees may engage in other employment outside of their City working hours provided it is understood and accepted that their primary duties and responsibilities shall be to the City of Ellsworth. Employees accepting secondary employment shall notify the City Manager in writing, in advance of taking such employment. If, in the opinion of the City Manager there is a conflict with the City employment, because, for instance, the outside employment may negatively affect the employee's ability to fully satisfy the job-related requirements of his or her position at The City of Ellsworth or may involve the use of confidential information acquired directly or indirectly through employment at The City of Ellsworth, the employee shall be so advised. After discussion with the employee the City Manager shall determine if the outside employment inappropriately conflicts with City employment. If the City Manager so determines, he/she shall notify the employee, in writing, to cease the outside employment. If the employee fails to cease the outside employment as directed by the City Manager it is grounds for termination.

Section 10. Political Activity

While working for the City, employees shall not seek or accept nomination or election to any office in the City Government⁸. Employees shall not use their authority of influence for the purpose of interfering with or affecting the result of an election or a nomination for office. Employees shall not take part in the management or campaigns of candidates for City Council, nor shall they circulate petitions, distribute campaign literature, or solicit or receive funds from any person, pertaining to the nomination of City Council members.

City employees shall not directly or indirectly, coerce, command, or advise state or local employees to pay, lend or contribute anything of value to a party, committee, organization, agency, or person for partisan political purposes.

No officer or employee of the City shall directly or indirectly interfere with the participation of any City employee in the non-partisan affairs of Ellsworth (except as provided in the first paragraph of this section), provided that no conflict of interest results. A "conflict of interest" shall mean a situation in which an employee's participation in the affairs of the City results in financial gain to him or his family other than a regular compensation paid to him as an officer of the City.

⁹No employee shall wear a City uniform or clothing provided by the City for purposes other than City work purposes.

Nothing in the paragraph shall be construed to prohibit any City employee from donating his or her own funds, time, or services for a political cause (except as provided in the first paragraph of this section), provided such donation of time or services is not made during the employee's City working hours or upon the premises of the City or by using the facilities or the services of the City.

Section 11. Receipt of Gifts

A City employee is prohibited from soliciting or accepting any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from any person who has or is seeking to obtain business with the City of Ellsworth or from any person within or outside City employment whose interests may be affected by the employee's performance or non-performance of his official duties.

Acceptance of nominal gifts in keeping with special occasions, such as marriage, retirement, Christmas or unsolicited advertising or promotional materials, e.g., pens, note pads, calendars of nominal intrinsic value, is permitted.

Section 12. Conflict of Interest

No employee shall participate in the decision to make purchases or enter into contracts where the employee has any interest, either directly or indirectly, in the vendor or contract with the City. An "interest" shall include any financial interest or other interest other than that possessed by the general public, held by the employee, the employee's immediate family, or individuals residing in the employee's household. No City employee shall sell materials to the City unless such material is awarded under a sealed bid.

Section 13. City Property

⁸ Amended August 17, 2009

⁹ Amended August 17, 2009

Employees must not, directly or indirectly, use or allow the use of City property of any kind for other than official activities, except as authorized by the City Manager. Please also refer to the Vehicle Policy.

Section 14. Use of Phone and Mail System

Employees should practice discretion in using city telephones when making local personal calls and shall be required to reimburse the City of Ellsworth for any charges resulting from their personal use of the telephone.

The use of the City of Ellsworth-paid postage for personal correspondence is not permitted.

Section 15. Use of City of Ellsworth Data Processing Equipment

Computer information systems and networks are an integral part of business at The City of Ellsworth. The City has made a substantial investment in human and financial resources to create these systems. The intent of these rules is to provide employees with general requirements for utilizing the City of Ellsworth's computers, networks and Internet services. More specific administrative procedures and rules governing day-to-day management and operation of the computer system may supplement these rules.

The policies and directives have been established in order to:

- Protect this investment.
- Safeguard the information contained within these systems.
- Reduce business and legal risk.
- Protect the good name of The City.

These rules provide general guidelines and examples of prohibited uses for illustrative purposes but do not attempt to state all required or prohibited activities by users. Employees who have questions regarding whether a particular activity or use is acceptable should seek further guidance from the Technology System Administrator (TSA) or City Manager.

Failure to comply with these rules and/or other established procedures or rules governing computer use in accordance with employee's, standard operating procedures, and other related policies, may result in disciplinary action, up to and including restricted access and/or dismissal. Illegal uses of the City of Ellsworth's computers and/or networks will also result in referral to law enforcement authorities.

Violations

Violations will result in disciplinary action by The City, up to and including termination, in accordance with City policy. Actions will be predicated upon the following factors:

- The type and severity of the violation.
- The presence of any repeated violations.
- Whether it causes liability or loss to The City.

Administration

The TSA is responsible for the administration of this policy.

Contents

The topics covered in this document include:

- Statement of responsibility
- Expectation of Privacy
- Internet and e-mail
- Computer viruses
- Access codes and passwords
- Physical security
- Copyrights and license agreements

Statement of Responsibility

General responsibilities pertaining to this policy are set forth in this section. The following sections list additional specific responsibilities.

Manager Responsibilities

The City Manager and Supervisors must:

- Ensure that all personnel that use or have access to City computers are aware of, and comply with, this policy.
- Create appropriate performance standards, control practices, and procedures designed to provide reasonable assurance that all employees observe this policy.

TSA Responsibilities

The TSA must:

- Develop and maintain written standards and procedures necessary to ensure implementation of, and compliance with, these policy directives.
- Provide appropriate support and guidance to help employees fulfill their responsibilities under this directive.

Expectation of Privacy

The City of Ellsworth retains control, custody and supervision of all computers, networks and Internet services owned or leased by the City. The City reserves the right to monitor all computer and Internet activity by employees and other system users. Employees have no expectation of privacy in their use of computers, and/or networks, including e-mail messages and stored files.

The Internet and E-mail

The Internet is a very large, publicly accessible network that has millions of connected users and organizations worldwide. E-mail is an integral feature of the Internet.

Policy

Access to the Internet is provided to employees for the benefit of The City of Ellsworth and its citizens. With it, employees are able to access a variety of information resources around the world.

Unfortunately, the Internet also contains considerable risk and inappropriate material. To ensure that all employees are responsible and productive Internet users, and to protect The City's interests, the following guidelines have been established for using the Internet and e-mail.

Use of City supplied e-mail or Internet implies acceptance of these policies.

Acceptable Use

Employees using the Internet are representing the City. Employees are responsible for ensuring that the Internet is used in an effective, ethical, and lawful manner. Examples of acceptable use are:

- Using a Web browser to obtain City related business and government information from commercial and governmental websites.
- Accessing databases for information as needed by the City.
- Using e-mail to conduct City business.
- Minimal personal use is acceptable within the parameters of this policy. Minimal use is considered to be on an irregular basis for a short period of time during the work period. Personal use of the Internet should not interfere with the performance of the employee's job duties.
- Using personal break or lunch periods on personal messages or web browsing.

Unacceptable Use

Employees must not use the Internet for purposes that are illegal, unethical, harmful to the City, or nonproductive. Examples of unacceptable use are:

- Sending or forwarding chain e-mail or any messages containing instructions to forward the message to others.
- Indiscriminately broadcasting e-mail or sending the same message to multiple recipients or distribution lists.
- Subscribing to mailing lists unrelated to work.
- Using excessive time for personal e-mail. It is understood that some personal messages will be sent and received, and time spent on personal activities should be kept to a minimum.
- Conducting a personal business using City resources.

- Transmitting or accessing any content that is offensive, harassing, fraudulent or in violation of the City's sexual harassment policy. It is possible to connect to offensive web sites accidentally in the course of legitimate research, and this should not cause alarm. Employees are expected to close or back out of these windows immediately. Examples include, but are not limited to, pornography, gambling, and potentially offensive stories or jokes. Employees needing to access this type of content, such as the police department during normal investigative procedures, should get supervisor approval before accessing these sites.
- Streaming transmissions, audio or video, this includes, but is not limited to; radio and television web-casts unrelated to business must be approved prior to viewing. This does not include web-casts for business purposes.
- Intentionally using internet facilities to disable, impair or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.

Downloads

Employees should not upload or download files that are not related to City business. Employees should get prior approval from their department head prior to downloading files. If the department head is unsure whether or not it is safe to download, then they should contact the TSA or their designee.

Employee Responsibilities

An employee who uses the Internet or Internet e-mail shall:

- Ensure that all communications do not interfere with their productivity or the productivity of others.
- Be responsible for the content of all text, audio, or images placed or sent over the Internet.
- All outbound communications should have the employee's name attached.
- Not transmit copyrighted materials without written permission from the copyright holder.
- Know and abide by all applicable City policies dealing with security and confidentiality of City records. Police department employees must know and abide by general order 2-21 as of the date of this policy.
- Run a virus scan on all files received through the Internet.
- Avoid transmission of confidential information. If it is necessary to transmit confidential information, employees are required to take reasonable steps to ensure that the information remains confidential, is delivered to the intended recipient, that the intended recipient is authorized to receive such information, and that the intended use is legitimate. Data encryption is the only known reasonable method at this time.
- Be responsible for any unauthorized charges including but not limited to credit card charges, subscriptions, long distance telephone charges, equipment and line costs, or for any illegal use of its computers such as copyright violations.

Copyrights

Employees using the Internet are not permitted to copy, transfer, rename, add, or delete information or programs belonging to others without express written permission from the copyright owner. Failure to observe copyright or license agreements may result in disciplinary action by the City and legal action by the copyright owner.

Monitoring

All messages created, sent, or retrieved over the Internet are the property of The City of Ellsworth and are regarded as public information. The City of Ellsworth reserves the right to access the contents of any messages sent over its facilities if The City believes, in its sole judgment, that it has a business need to do so.

All communications, including text and images, can be disclosed to law enforcement or other third parties without prior consent of the sender or the receiver. *This means, don't put anything into your e-mail messages that you wouldn't want to see on the front page of the newspaper, or be required to explain in a court of law.*

At this time, it is not policy, practice or desire to monitor messages or Internet traffic. However logs with this information exist, they may be spot checked. Please be aware that legal obligations (court decisions, decrees, notice of pending *relevant* legal action) or gross abuse can force a change to this policy at any time without prior notice.

Remember that e-mail is a written form of communication that can survive electronically for a very long time (even after deletion). It cannot be un-sent, and *it cannot be considered private.*

Computer viruses

Computer viruses are programs designed to make unauthorized changes to programs and data. Therefore, viruses can cause destruction of City resources.

Background

It is important to know that:

- Computer viruses are much easier to prevent than cure.
- Defenses against computer viruses include protection against unauthorized access to computer systems, using only trusted sources for data and programs, and maintaining anti-virus software.

TSA responsibilities

The TSA shall:

- Install and maintain appropriate anti-virus software on all computers.

- Respond to all virus attacks and destroy any virus detected.

Employee responsibilities

These directives apply to all employees:

- Employees shall not knowingly introduce a computer virus into City computers.
- Employees shall not load diskettes, CDs or other media of unknown origin.
- Employees shall not tamper with the configuration of anti-virus software except as directed by the TSA or their designee.
- Incoming files/data (diskettes, cd's, and other) shall be scanned for viruses before they are read.
- *Never* open e-mail attachments that end with “.exe”, “.bat”, “.bas” or other known executable identifiers.
- Any employee who suspects that their workstation has been infected by a virus shall immediately contact the TSA or their designee.

Access Codes and Passwords

The confidentiality and integrity of data stored on City computer systems must be protected by access controls to ensure that only authorized employees have access. This access shall be restricted to only those capabilities that are appropriate to each employee's job duties.

TSA responsibilities

The TSA shall be responsible for the administration of access controls to all networked City computer systems. The TSA will process user adds, deletes, and changes upon the request from the end user's supervisor.

The TSA will maintain a list of administrative access codes and passwords and keep this list in a secure area.

Accounts that remain inactive for an extended period of time will be deactivated, and then purged by the TSA or designee.

Employee Responsibilities

Each employee:

- Shall be responsible for all computer transactions that are made with their User ID and password.
- Shall not disclose passwords to others. Passwords must be changed immediately if it is suspected that they may have become known to others. Passwords should not be recorded where they may be easily obtained.
- Will change passwords when prompted to by the TSA or their designee.

- Should use passwords that cannot be easily guessed by others.
- Should log out or lock their workstation when leaving it unattended for any length of time.
- Each employee must use their personal username and password. Usernames and passwords must not be shared.
- Store data and files in a data repository designated by the TSA. Because servers are backed up routinely, this protects against data loss.

Supervisor's Responsibility

Department heads should notify the TSA or designee promptly whenever an employee leaves the City, or transfers to another department, so their access can be revoked or changed. Involuntary terminations must be reported concurrent with, or prior to, termination.

Physical and Data Security

It is City policy to protect computer hardware, software, data, and documentation from misuse, theft, unauthorized access, and environmental hazards.

Employee Responsibilities

The directives below apply to all employees:

- Media (diskettes, CDs, tapes, or other data storage devices) should be stored out of sight when not in use. If they contain sensitive or confidential data, they must be locked up. Employees are strongly encouraged to store such data in their designated data repository.
- Media should be kept away from environmental hazards such as heat, direct sunlight, and magnetic fields.
- Critical computer equipment, such as file servers and network equipment must be protected by an uninterruptible power supply (UPS). Other computer equipment must be protected, by a surge suppressor at minimum. Laser printers will be plugged into separate electrical outlets and not into UPS's.
- Computer and network hardware should not be exposed to environmental hazards such as food, smoke, liquids, high or low humidity, and extreme heat or cold. Where these hazards are unavoidable, appropriately hardened equipment must be used.
- Since the TSA is responsible for all equipment installations, disconnections, modifications, and relocations, employees are not to perform these activities. This does not apply to portable computers for which an initial connection has been made by the TSA or their designee.
- All data stored on City owned equipment belongs to the City, any attempt to delete, erase or otherwise conceal information stored on this equipment with out TSA approval may result in disciplinary action.

- Information belonging to the City of Ellsworth is ONLY to be accessed to conduct City business, any attempts to access information not belonging to the employee, or not necessary in conducting City business may result in disciplinary action.
- Employees shall not take shared portable equipment such as laptop computers off the premises without the informed consent of their supervisor. Informed consent means that the manager knows what equipment is leaving, what data is on it, and for what purpose it will be used.
- Employees should exercise care to safeguard the valuable electronic equipment assigned to them. Employees who neglect this duty may be accountable for any consequent loss or damage.
- Employees must remember that existing policy concerning care and handling of City property also applies to computer equipment.

Copyrights and License Agreements

It is the City's policy to comply with all laws regarding intellectual property.

Legal Reference

The City and its employees are legally bound to comply with the Federal Copyright Act (Title 17 of the U. S. Code) and all proprietary software license agreements. Noncompliance exposes the City and the responsible employee(s) to civil and criminal penalties.

Scope

This directive applies to all software that is owned by the City, licensed to the City, or developed using City resources by employees or vendors. Software not owned or licensed to the City must not be installed on City computers.

TSA Responsibilities

The TSA will:

- Maintain records of all software owned or licensed by City, including software license details and assignments for all software applications, utilities, and modules.
- Periodically scan City computers to verify that only properly licensed, City owned software is installed.

Employee Responsibilities

Employees shall not:

- Install software unless authorized by the TSA. Only authorized software that is licensed to or owned by the City is to be installed on City computers.
- Copy software unless authorized by the TSA.
- Download software unless authorized by the TSA.

Civil Penalties

Violations of copyright law expose The City and the responsible employee(s) to the following civil penalties:

- Liability for damages suffered by the copyright owner.
- Any lost profits attributable to the copying.
- Large monetary damage awards for each illegal copy.

Criminal Penalties

Violations of copyright law that are committed "willfully and for purposes of commercial advantage or private financial gain" that is, to save or make money, expose The City and those employees responsible to the following possible criminal penalties:

- Fines up to \$500,000.00 for each illegal copy.
- Jail terms of up to five years.

(as of the date of this policy)

Section 16. Use of Equipment and Vehicles

Equipment and vehicles essential in accomplishing job duties are expensive and may be difficult to replace. When using property, employees are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines. Employees are to notify the Department Head or designee if any equipment, machines, tools, or vehicles appear to be damaged, defective, or in need of repair. The improper, careless, negligent, destructive, or unsafe use or operation of equipment or vehicles, as well as excessive or avoidable traffic and parking violations, may result in disciplinary action.

Employees whose work requires operation of a motor vehicle must present and maintain a valid vehicle operator's license that is neither suspended nor revoked and must be able to provide proof of adequate insurance coverage. Any changes to such an employee's driving record or license status must be reported to the employee's supervisor immediately. Where applicable, failure to maintain a valid driver's license may be sufficient cause for immediate termination.

Employees traveling on behalf of the City must comply with all state, federal, and local traffic rules and regulations. The City of Ellsworth is not responsible for and will not reimburse an employee for any fine incurred by the employee for violating a traffic or criminal law while traveling on behalf of the City. Employees traveling on City business are expected to wear seatbelts at all times.

Any accident, no matter how minor, which occurs while any employee is operating a vehicle on City business, must be reported immediately to the City Manager.

Employees who operate personal vehicles on City business are strictly prohibited from operating such vehicles under the influence of alcohol or controlled substances, except for prescription medication authorized by a physician who does not cause unsafe performance.

Employees are not permitted to use City vehicles for personal business/activity.

Failure to follow these rules may result in disciplinary action, up to and including immediate termination.

Section 17. Safety

To assist in providing a safe and healthful work environment for employees, customers, and visitors, the City of Ellsworth has established a workplace safety program. This program is a top priority for the City of Ellsworth. The City Manager has responsibility for implementing, administering, monitoring, and evaluating the safety program.

Section 18. Use of Tobacco Products

In keeping with the City of Ellsworth's intent to provide a safe and healthy work environment, use of tobacco products is prohibited within all City buildings and vehicles. Exterior designated smoking areas, as appropriate, shall be determined by the City Manager.

Section 19. Employee Dress and Appearance

As representatives of the City of Ellsworth, employees are expected to maintain a neat and professional appearance. The following types of clothing are prohibited: pants made of jean material of any kind; shorts (unless part of a suit); tank or halter tops; strapless tops; cropped tops; clothing that does not adequately provide coverage or that shows undergarments; torn clothing; clothing with holes; flip flops; sweatsuits or similar attire; and leggings. This list is not exhaustive. If an employee has a question about whether a particular type of clothing is permitted under this policy, it should be directed to his/her supervisor or Department Head.

Professional appearance also means maintaining good hygiene and grooming while working. Facial hair is permitted as long as it is neat and clean. Earrings are acceptable as long as they are not a safety hazard; however, no more than two earrings may be worn in each ear while working. Rings through the nose, eyebrow, tongue, or other body parts visible to the public may not be worn while working. All tattoos must be small in size and not offensive or covered at all time while working. Employees are expected to be conservative in the wearing of makeup and scented products.

Employees who violate this policy in the opinion of their Department Head or the City Manager may be asked to leave the workplace until they are in compliance. Repeated infractions of this policy may be cause for disciplinary action.

Under certain limited circumstances, an exception to this policy may be made for an employee with a bona fide health and/or religious need. To request such an exception, the employee must contact the City Manager as soon as the need for the exception arises.

Section 20. Violence in the Workplace

The safety and security of all employees is of primary importance. Threats, stalking, threatening and abusive behavior, or acts of violence against employees, visitors, customers, and/or City facilities or property by anyone on City property, on a City-controlled site, or in connection with City employment or business will not be tolerated (even those made in jest). Violations of this policy will lead to corrective action up to and including termination and/or referral to appropriate law enforcement agencies for arrest and prosecution. The City of Ellsworth reserves the right to take any necessary legal action to protect its employees.

All employees are responsible for notifying their Department Head immediately of any threats that they witness or receive or that they are told another person witnessed or received. Even without a specific threat, all employees should report any behavior they have witnessed that they regard as potentially threatening or violent or that could endanger the health or safety of an employee when the behavior has been carried out on City premises, on a City-controlled site, or is connected to City employment or business. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threatening behavior and the person or persons being threatened.

Section 21. Drug and Alcohol Use and Drug Testing

It is The City of Ellsworth's desire to provide a healthful and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.

Drug and Alcohol Use

While on the City of Ellsworth premises and while conducting City-related activities off the City of Ellsworth premises, no employee may use, possess, distribute, sell, or be under the influence of alcohol, legal drugs prescribed to someone other than the employee, or illegal drugs. The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

Violations of this policy may lead to disciplinary action, up to and including immediate termination of employment.

Alcohol and Drug Policy and Testing Procedures for City Employees Required to Hold a Commercial Drivers Licenses

1. Purpose

The City of Ellsworth is committed to a drug and alcohol free workplace. In order to ensure the safety of its employees and the general public, as well as to comply with 49 CFR Part 382 and other pertinent federal laws, the City Council has adopted this employment policy.

The City takes pride in its employees who perform critical duties in a tidy effective manner with safety foremost in their minds. This policy strengthens our commitment to a safe workplace.

2. Program Administrator

The City Manager is designated by the City Council as the Alcohol/Drug Testing Program Administrator. The Program Administrator is responsible for answering questions from drivers, employees or the public in general. The Program Administrator will maintain the confidentiality of all information relating to drug and alcohol testing. The Program Administrator may provide such information as necessary to enable the appropriate supervisor to take the appropriate action to ensure compliance with this policy. In addition to his/her duties under this policy, the Program Administrator is also responsible for compliance with the Program Administrator Guidelines.

3. Scope of Policy

This policy applies to all regular full-time, part-time or on-call and temporary employees who are required to hold a Commercial Driver's License (CDL) for their position. All applicants for employment positions requiring a CDL are required to pass a drug test as a prerequisite of employment, prior to final hiring. Any applicant who fails a drug test shall not be hired, although may re-apply for employment in the future.

Any person who was employed on a part-time or on-call basis for the City of Ellsworth at least once during calendar year 1995 and is employed at least once annually thereafter shall be considered a continuing employee for purposes of this policy, and is not subject to pre-employment testing prior to recommencing work. However, such employees are subject to all other provisions of this policy.

All covered employees shall receive a copy of this policy, as well as educational materials on alcohol and substance abuse.

4. Compliance with Regulations

All CDL employees subject to alcohol and drug testing must be in compliance with this policy at all times while working for the City. This includes all time spent operating commercial vehicles, as well as time spent maintaining or repairing those vehicles.

NOTE REGARDING INDEPENDENT CONTRACTORS: Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 and are responsible for compliance with that and related laws. The City will not provide or pay for tests, evaluations or rehabilitation for independent contractors or their employees. The City shall make compliance with the law a condition of any contract, which requires a CDL driver.

5. Substances Tested

When drug and alcohol screening is required by this policy, a breath test and/or urine test will be given to allow for determination of the following:

1. Alcohol
2. Marijuana
3. Cocaine
4. Amphetamines
5. Phencyclidine (PCP)
6. Opiates

6. Prescription Drug Use

Employees covered by this policy may use prescription drugs and "over the counter" medications provided that:

1. The prescription drugs or their generic equivalent have been prescribed to the employee within the past 12 months by an authorized medical practitioner.
2. The employee does not consume prescribed drugs more often than as prescribed by the employee's physician.
3. Any employee who has been informed that the medication could cause adverse side effects while working shall inform his/her supervisor prior to using these substances. The

City at all times reserves the right to have a licensed physician determine if use of a prescription drug or medication by an employee produces an adverse effect. If such a finding is made, the City may notify the employee's doctor (with employee's permission) to determine if other medications are available which would not seriously affect the employee's ability to work safely. If an appropriate substitute medicine is not available, the City may limit or suspend the employee's work activities to non-safety sensitive duties.

7. Tests Required

All employees subject to this policy shall be tested for alcohol and/or controlled substances in the following circumstances:

1. Pre-employment. Drug tests will be conducted when an offer is made to hire an employee for a CDL position. The offer for employment is contingent on the applicant passing these tests. This includes existing employees who are applying for CDL positions.
2. Random. Drug and alcohol tests will be conducted on a random, unannounced basis. The number of annual drug tests shall equal 50% of the number of CDL required positions while the number of annual alcohol tests shall equal 25% of the CDL required positions. The City has entered into an agreement with a third party administrator (TPA) to randomly select the CDL employees for testing and then notify the Program Administrator of the person or persons chosen.
3. Post-accident. As soon as is practicable after an accident, the employee shall be tested for alcohol and drugs if: (A) the accident involved the loss of human life; or (B) the employee received a citation for a moving traffic violation arising for the accident.
4. Reasonable suspicion. All employees who exhibit to a trained supervisor signs and symptoms of alcohol and/or drug abuse while on the job, prior to reporting to work, or just after work will be required to submit to an alcohol and/or drug test. The supervisor shall document the specific facts, symptoms or observations by completing a "Reasonable Suspicion Record" form.

NOTE: Do not allow an employee to drive him/herself to the testing facility for a reasonable suspicion test. Instead, the supervisor or another employee should provide transportation to the testing facility.

5. Return-to-duty. An employee who engaged in conduct prohibited by Section 9 must submit to an alcohol test and drug test to return to duty. The results of a drug test must be negative to return to duty, and the results of an alcohol test must be less than 0.02 to return to duty.
6. Follow-up. An employee who previously tested positive and has returned to duty must submit to a combination of at least six (6) alcohol and drug tests during the first year after returning to work. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to work, not to exceed twelve (12) a year.

8. Testing Procedures

Drug Testing: Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at an off-site facility selected by the City. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the

testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a laboratory, which is certified in accordance with DHHS guidelines or equivalent guidelines.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-divided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test if requested by the employee.

During testing an initial screening test is performed. If the test is positive for one or more drugs a confirmation test will be performed for each individual drug using gas chromatography/mass spectrometry (GC/MS) analysis. This test ensures that over the counter medications are not reported as positive results.

If the analysis of the primary specimen results in a confirmed positive test, the employee may within 72 hours request that the split specimen also be tested at a certified laboratory of his/her choice. The second test is at the employee's expense unless the test result is negative, in which case the City will reimburse the employee.

All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the City. In the event of a positive test result, the MRO will first attempt to contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive results (such as over-the counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative. If the MRO is unable to contact the employee, then the employer will be contacted and requested to advise the employee to contact the MRO. Urine samples shall be provided in a private test room, stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Employees and applicants may be required to disrobe and will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples. An applicant or employee may waive the right to privacy and provide the urine sample in the presence of a witness (of the same gender) and not be required to disrobe and wear a hospital gown.

Alcohol Testing: Alcohol testing will be conducted using an evidential breath testing (EBT) device. The test breath test must be performed by a certified Breath Alcohol Technician (BAT) trained in the use of EBT and alcohol testing procedures. Under certain circumstances, post-accident tests conducted by law enforcement personnel or medical personnel will be acceptable.

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concentration is considered a negative result. Any result of 0.02 or greater requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

9. Prohibited Conduct

CDL employees shall not:

1. Report to work and/or remain on duty with an alcohol concentration of 0.04 or greater;

2. Possess any alcohol while on duty;
3. Use any alcohol while on duty;
4. Use any alcohol within four (4) hours before going on duty;
5. Use any alcohol within eight (8) hours after an accident for which the CDL employee must be tested for alcohol concentration;
6. Refuse to submit to the following alcohol and/or controlled substance tests: random test, reasonable suspicion test, post-accident test, or follow-up test;
7. Report to or remain on duty when using any controlled substance, except when used under a physician's orders and when the physician has informed the CDL employee in writing that the use will not affect the safe operations of a commercial vehicle. In the case of a written warning by the physician, the employee shall report this to his/her supervisor immediately;
8. Report to or remain on duty if the employee tests positive for controlled substances.

Failure to comply with these rules is a violation of this policy and may result in disciplinary action and shall result in referral to a substance abuse professional.

10. Refusal to Test

An employee's failure to submit to testing may result in disciplinary action up to and including dismissal, and is also grounds for referral to a substance abuse professional. Failure to submit to a test by an applicant will result in denial of employment. Specifically, the following circumstances may be considered a refusal to test:

1. Failure to report to the designated testing area immediately after being notified to submit to an alcohol or drug test.
2. Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined to be unable to do so.
3. Engaging in conduct that clearly obstructs or delays the testing process.

11. Alcohol Concentration of 0.02 or Greater but Less Than 0.04

Provided that the employee has not violated Section 9, any employee whose alcohol test results in a concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform any safety-sensitive function for at least 24 hours following the test. The employee will not be paid for work-time lost as a result of this section unless he/she works in another capacity for the Municipality during that time period. The employee will not be required to undergo evaluation by a substance abuse professional if the test result is 0.02 or greater but less than 0.04, nor will a return-to-duty test be required unless there is reasonable suspicion that the employee is still under the influence of alcohol or drugs.

NOTE: This Section applies only in limited situations. For example, if an employee last consumed alcohol more than 4 hours before work, but still has a blood/alcohol level of .03 when he/she shows up for work, he/she is not in violation of Section 9 but is subject to this Section.

12. Notice and Consent

Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of test results to those officials with a need to know. The chemical screen consent form shall provide space to indicate current medication.

All recruitment announcements for any CDL position, including in-house recruitment and promotion, will disclose that a drug screening test will be required of the applicant.

13. Consequences of Violation of this Policy

1. Any employee who violates Section 9 or 10 of this policy shall be immediately removed from the safety-sensitive function and will be advised by the City of the resources available for evaluating and resolving drug and alcohol abuse problems. The employee is required to be evaluated by a substance abuse professional. All evaluation and rehabilitation shall be at the employee's cost unless otherwise agreed by the City. An employee shall not be allowed to return to the safety-sensitive function until he/she has a return-to-duty alcohol test result of less than 0.02 or a return-to-duty drug test with a verified negative result.
2. In addition, any employee who violates Section 9 or 10 of this policy may be subject to disciplinary action up to and including dismissal. Before discipline, reassignment or dismissal is imposed following a confirmed positive drug test, the employee shall have the opportunity to participate for up to 6 months in a rehabilitation program unless otherwise agreed by the City. Factors to be considered in determining the appropriate disciplinary response include, but are not limited to the following: Employee's work history, length of employment, current job performance and existence of past disciplinary actions. Disciplinary action is imposed by municipal policy; it is not required by federal law. *Under State law, if part of all of the costs of drug abuse rehabilitation are covered by a group health insurance plan which includes the employee in question, then such insurance may be used by the employee for that purpose, see 26 M.R.S.A. 685 as amended by 1995 PL c.344.
3. Further grounds for discipline or dismissal under city policy include, but are not limited to:
 - a. Refusal to submit to a rehabilitation program after testing positive.
 - b. Failure within 6 months to successfully complete a rehabilitation program after commencing the program, or failure to pass a return-to-duty drug or alcohol test.
 - c. Evidence that the employee has substituted, adulterated, diluted or otherwise tampered with his/her urine sample.
 - d. Failure to contact a substance abuse professional within five (5) regular working days after being notified of a confirmed (MRO certified) positive test for the improper use of alcohol or unauthorized substances.
4. During the period the City is awaiting an employee's test result for a post-accident test, reasonable suspicion test, or return-to-duty test, the City may transfer the employee to another position with or without a reduction in pay or benefits. The City also reserves the

right to place an employee on unpaid suspension to reduce any possible safety hazard. A determination as to whether an employee is placed in another position or placed on paid or unpaid suspension may be based on, but is not limited to: who is responsible for and/or the severity of the accident, if applicable; the observed condition of the employee, if applicable; the employee's work history; length of employment; current job performance and the existence of past disciplinary actions. Action taken by the City under this subsection is a matter of municipal policy, and is not imposed by federal law.

14. Employee/Applicant Rights and Responsibilities

1. In the event of a confirmed positive test result, employees and job applicants shall have the opportunity to present an alternative explanation for the test result by contacting the Medical Review Officer (MRO). This shall be done within 72 hours after notification of the confirmed result. No further action will be taken if there is a justified explanation, or there is a reasonable doubt as to the accuracy of the result or chain of custody of the sample.

2. Any employee with a positive test result may upon written request to the Program Administrator have the right to any information relating to the test result and procedures. A job applicant may request information concerning the test result within 60 days after the decision on his/her employment application.

3. Upon successfully completing a rehabilitation program within 6 months after it commences and upon passing a return-to-duty drug test, the employee is entitled to return to his/her previous job with full pay (but not back pay) and accrued benefits, unless conditions unrelated to the employee's previous test make the employee's return impossible or inappropriate. The rehabilitation or treatment provider in consultation with the Program Administrator shall determine whether the employee has successfully completed in the rehabilitation program. The City is not required to hold the employee's job open for more than 6 months after the employee commences a rehabilitation program. The employee may apply accrued vacation and sick leave, if any, against any time period where he or she is unavailable for work due to drug abuse rehabilitation.

15. Confidentiality of Information

Unless the employee or applicant consents, all information acquired by the City in connection with the testing processes is confidential and may not be released to any person other than to the employee or applicant who is tested, the Program Administrator, officials with a need to know, and the rehabilitation provider. The foregoing shall not prevent the release of information that is required or permitted by state or federal law, or the use of information in any grievance procedure, administrative hearing or lawsuit relating to the imposition of the test or the use of the test results.

16. Documents Provided

The City will provide each person subject to this policy a copy of the policy. The City will also provide printed material, which describes the effects of alcohol and/or controlled substances on the individual's health, work and personal life, as well as information on the signs and symptoms of alcohol or controlled substances and methods of treatment or intervention for drug or alcohol abuse.

Section 22. Sexual and Other Unlawful Harassment

It is the policy of the City of Ellsworth that all employees have the right to work in an environment free of sexual and other forms of unlawful harassment. The City of Ellsworth will not tolerate any form of sexual or other unlawful harassment by supervisors, co-workers, customers or suppliers against any employee of The City.

Sexual harassment is illegal and is defined as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

The following are types of conduct that may constitute sexual harassment:

- Slurs, jokes or degrading comments of a sexual nature
- Unwelcome sexual advances
- Suggestive or lewd remarks
- Unwelcome hugging, touching or kissing
- Requests for sexual favors
- Repeated offensive sexual flirtation or propositions
- The display of sexually suggestive pictures or objects
- Repeated unwelcome physical contact or touching such as patting, pinching or constant brushing against another's body.

This policy prohibits any overt or subtle pressure for sexual favors including implying or threatening that an applicant's or employee's cooperation of a sexual nature (or lack thereof) will have any effect on the person's employment, job assignment, wage, promotion, or any other condition of employment or future job opportunities. This policy also prohibits any conduct based on sex or other protected categories, which creates an intimidating, hostile or offensive work environment.

This policy also prohibits illegal harassment on the basis of any other protected category, such as race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin.

Any employee who feels that he or she is the victim of sexual or other illegal harassment or who has knowledge of such behavior occurring toward another person should immediately report the matter to his or her supervisor, Department Head, or the City Manager.

Any questions regarding this policy should be addressed to the employee's Department Head. No employee will be retaliated against for reporting sexual or other illegal harassment.

CHAPTER X - Additional Provisions

Section 1. Interpretation of Language

The masculine pronoun, wherever used, is interpreted to include the feminine pronoun as well.

Section 2. Review and Amendments

This Personnel Ordinance shall be reviewed periodically by the City Manager and proposed changes to the ordinance shall be submitted to the City Council. An amendment to this ordinance may be adopted by a majority vote of the City Council.

Section 3. Severability

If any article, section or provision of this ordinance should be found to be invalid or unenforceable by decision of the courts, only that article, section or provision specified in such decision shall be of no force and effect and such decision shall not invalidate any other article, section or provision.

Section 4. Applicability and Inconsistency

Except where enumerated in this section, this ordinance shall apply to all City employees, including those covered by collective bargaining agreements.

1. Where the specific language in a collective bargaining agreement conflicts with the language in a section of this ordinance, the collective bargaining agreement language shall prevail.
2. Where the City Council has voted to adopt a different policy for individual cases, the City Council vote shall prevail.

Provisions of this ordinance shall be applicable to employees of collective bargaining units to the extent that they are not inconsistent with the language contained within those agreements. In the event that sections of the personnel ordinance conflict with provisions of collective bargaining agreements the City shall negotiate the impact of the personnel ordinance language or allow the collective bargaining agreement language to prevail. Any provisions of this ordinance that are found to be inconsistent with other general policies or contractual agreements approved by the City Council shall be automatically amended to be consistent.

CHAPTER XI - Special Provisions Applicable to Highway Department Employees

The following provisions shall apply to employees of the Highway Department. In the event of a conflict between CHAPTER XI and CHAPTERS I through X of the Personnel Ordinance, the provisions of CHAPTER XI shall prevail.

ARTICLE 1. SENIORITY

Section 1. The City shall establish a seniority list by job classification for the Highway Department employees covered by this Ordinance, listing the employee with the greatest seniority first. Seniority shall be based upon the employee's continuous length of service with the City in the Highway Department as of the last date of hire as a full-time Highway Department employee. The seniority list shall be posted annually on the bulletin board on January 2 for a period of not less than thirty (30) days, and a copy thereof shall be made available to the employees. Any objection to the seniority list as posted must be reported to the Foreman within ten (10) days from the date of posting. Objections made after ten (10) days from the date of posting shall be deemed waived and the seniority list shall be deemed to be accepted.

Section 2. For the purpose of computing continuous service, it is agreed that time spent by an employee on vacation or sick leave or holidays, shall be included in the computation of continuous service as time worked. Absence due to disability of more than one (1) year's duration shall not be included in the computation of continuous service as time worked.

Section 3. Vacancies. In the event that the City determines that a job vacancy exists, it shall be posted on the bulletin board for a period of five (5) working days. Qualified employees are encouraged to submit applications for the vacancy. In selecting a person to fill the vacancy, the City shall select the person who is most able and most qualified. Where ability and qualifications are equal among several candidates, an employee's seniority will be recognized as the controlling factor.

Section 4. When a plow route becomes available, an interested employee may submit a written request to be assigned to the route. The Foreman will consider seniority as one factor in assigning the route. The ultimate decision will be at the discretion of the Foreman.

ARTICLE 2. LAYOFF

Section 1. In cases of layoffs, the employer shall layoff the least senior employee(s) within classification(s).

Section 2. Employees shall be recalled from layoff according to their seniority. No new employees shall be hired until all employees on layoff status have been afforded recall notice. Employees shall remain on the recall list for twelve (12) months from the date of layoff. Employees will be recalled by certified letter, return receipt requested, at their last known address. Failure to respond to the notice or to return to work at the time specified in the notice waives further rights to recall.

ARTICLE 3. PROBATIONARY PERIOD

All new employees hired shall serve a probationary period of six (6) months. During the probationary period, an employee may be terminated without cause. Additionally, such an employee may not file a grievance for a termination during the probationary period.

ARTICLE 4. SEASONAL & PART TIME EMPLOYEES

The City may hire seasonal or part time employees from time to time as conditions warrant it.

ARTICLE 5. HOURS OF WORK AND OVERTIME

Section 1. Work Week. The regular workweek shall be forty-five (45) hours, which shall consist of five nine-hour days. The Foreman may alter work schedules as necessary.

Section 2. Overtime Rate of Pay. Each employee shall be paid at the rate of time and one-half of his regular hourly rate for all hours worked over forty (40) in one week. For the purposes of computing overtime, holidays shall be included as hours worked.

Section 3. Rest Periods. All employees' work schedules shall provide for a 15-minute rest period during each morning and afternoon shift. The rest period shall be scheduled at the middle of the shift whenever this is feasible.

Section 4. The usual unpaid lunch period shall be from 11:30 AM to 12:00 NOON with the understanding that the circumstances and conditions may require a different time.

ARTICLE 6. HOLIDAYS

Section 1. Holidays Recognized and Observed. The following holidays shall be recognized and observed as paid holidays:

1. New Year's Day
2. Martin Luther King Day
3. Washington's Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Day After Thanksgiving
11. Christmas Day

In addition to the above listed paid holidays, each employee shall be granted one addition paid holiday to be known as a "Floating Holiday," which Floating Holiday shall be selected by the employee with the approval of the foreman.

Employee shall receive one day's pay for each of the holidays listed above on which they perform no work.

Whenever any of the holidays listed above shall fall on Sunday, the succeeding Monday shall be observed as the holiday. Whenever any of the holidays listed above shall fall on Saturday, the preceding Friday shall be observed as the holiday.

For the purposes of computing overtime pay, holidays shall be counted as nine (9) hour days.

Section 2. Eligibility Requirements. Employees shall be eligible for holiday pay under the following conditions:

a) The employee would have been scheduled to work on such day if it had not been observed as a holiday; unless the employee is on a day off, vacation, or sick leave.

Section 3. Holiday Work. If an employee works on any of the holidays listed above, in addition to his holiday pay, he shall be paid for all hours worked.

ARTICLE 7. CALL BACK/ON CALL

A. Call Back - Employees called back to work shall receive a minimum of three (3) hours pay for the work for which they are called back. This provision shall apply only when such call back hours result in hours worked which are not annexed to one end or the other of the working day.

- B. On Call – Two (2) employees per week from November 1 through April 15 will be on call for minor call back requests (requests that do not require the full crew to participate). Each employee shall receive \$100.00 for the week of on call duty.

The Highway Department employees shall establish an on call list of two (2) man teams that shall be responsible for coverage when it is not necessary to require the full crew. If the employees are unable to agree or do not provide a list, the Foreman will prepare a list. The Team list and rotation shall be provided to the Highway Department Foreman, the HR Manager and the Ellsworth Police Department. One phone number for each person on the team shall be provided. Once one person on the team is contacted, it shall be their responsibility to contact their teammate.

Once this list has been established, it shall be mandatory to participate in the rotation until any new employee is hired to the Department for replacement to assure continuity.

If for any reason an employee is unable to fulfill the obligation for their week it shall be their responsibility to find their replacement for the entire week, and they shall forfeit the stipend to their replacement for that week, unless their absence is due to an unforeseen emergency. In the case of an unforeseen emergency, the Foreman shall request a volunteer replacement until the situation is evaluated.

Failure to be available on your rotation without authorization may lead to disciplinary action.

ARTICLE 8. SICK LEAVE

Section 1. Allowance. Any employee contracting or incurring any non-service connected sickness or disability, which renders such employee unable to perform the duties of his employment, shall receive sick leave with pay, if they have the accumulated sick leave time on the books.

In the event of sickness or disability in the employee's family, i.e. spouse, domestic partner, parent, children, the employee shall also be granted leave with pay from their accumulated sick leave time. Employees shall be limited to five (5) days of sick leave each calendar year for family illness or disability. At the sole discretion of the City Council, an employee may be permitted to use more than five days of sick leave per year for family illness or disability. The City Council shall review a request for extended family illness leave on a case-by-case basis, and the City Council's decision shall not be subject to the Grievance procedure of Article 16.

For the purpose of this article and the remaining contract, domestic partner shall mean a partner with which the employee has a spousal-type relationship where partners have co-habited for a consecutive six (6) month period.

Employees shall be allowed one day of sick leave for each month of service. An employee in any month in which the employee is compensated for ninety-six (96) or more hours of work shall earn sick leave.

For the purposes of computing overtime pay, sick leave days shall be counted as nine (9) hour days.

Section 2. Accumulation: Employees shall start to earn leave from their date of employment and they shall accumulate sick leave up to one hundred twenty (120) days, (1,080 hours).

Section 3. Unused Sick Leave: Employees shall not be compensated in cash for any unused sick leave when they are separated from employment except in the case of retirement where one half of unused sick leave will be compensated at the then prevailing rate of pay.

Section 4. Family Medical Leave Act. Twelve (12) Month Period - means a rolling twelve (12) month period measured backward from the date the leave is taken and continuous with each additional leave day taken.

ARTICLE 9. VACATIONS

Section 1. Each regular, full time employee shall earn paid vacation time based upon an employment anniversary year.

Upon successful completion of one (1) year of service, an employee shall be entitled to two (2) weeks and one day (99 hours) of paid vacation.

After completing six (6) years of service an employee shall be entitled to three (3) weeks and one day (144 hours) of paid vacation each anniversary year.

After completion of thirteen (13) years of continuous service, an employee shall be entitled to four (4) weeks and one day (189 hours) of paid vacation each anniversary year.

After completion of nineteen (19) years, an employee shall be entitled to five (5) weeks and one day (234 hours) of paid vacation each anniversary year.

Section 2. Vacations shall be scheduled by the Foreman in accordance with the needs of the department. Depending upon the department's needs, the Foreman shall schedule vacations in accordance with the expressed preferences of the employees. When a conflict exists between the expressed preferences of two or more employees, the expressed preference of the employee with the greatest seniority within the job classification shall be given first consideration.

On the employee's anniversary date, any remaining vacation time shall be paid to the employees Retirement Health Savings Plan per Article 14.

Section 3. For the purposes of computing overtime pay, vacation days shall be counted as nine (9) hour days.

ARTICLE 10 OTHER PAID LEAVES

Section 1. Severance Pay. After an employee has served two (2) years of continuous service, the City will pay severance pay equal to two (2) weeks' pay in addition to accumulated vacation pay if the employee is either:

1. Involuntarily terminated from employment;
2. Retires for health reasons; or
3. After twenty years of service; or
4. Upon or after reaching age sixty.

Section 2. Family Death. In the event of a death in the family of an employee -- spouse, parents, children, brother, sister, grandparents, father-in-law, mother-in-law, brother-in-law, sister-in-law, or domestic partner, the employee shall be granted three (3) days leave of absence with full pay to make household adjustments, arrange for medical services, or to attend funeral services. In the case of a non-relative living in a household, before said family death leave can be granted it must be reviewed and approved by the City Manager.

Section 3. Jury Duty. Employees shall be granted a leave of absence with difference in pay between regular pay and jury pay any time required to report for jury duty or jury service. Employees who are dismissed on or before noon from Jury Duty shall be required to report to work.

Section 4. Short Term Unpaid Leave. Employees may be granted up to ninety (90) hours per year of short term unpaid leave with Foreman recommendation and City Manager approval. No short term unpaid leave will be granted that exceeds forty-five (45) consecutive hours and no short term unpaid leave will be granted between November 1 and the last day of February.

ARTICLE 11. WORK OUT OF CLASS

Employees assigned to work outside of their classification shall be paid the wage rate established for that class or their own wage rate, whichever is higher.

During a scheduled absence of the Highway Foreman, one (1) person may be assigned the classification of "Crew Leader" for the duration of the absence. The "Crew Leader" shall be reimbursed with a stipend of \$1.00 per hour.

ARTICLE 12. WAGES

The employee's regular hourly rate of pay shall be established as shown in Appendix A attached.

1. Step A to Step B is one (1) year.
2. Two (2) years to move between Steps B and each succeeding step to Step H.
3. Seven (7) years to move from Step H to Step I.
4. Kevin Sawyer shall receive Equipment Operator pay while working as a welder.
5. The City agrees to award each employee who is a non-smoker a \$75 bonus to be paid in June of each year.

6. The City will pay 85% contribution toward a membership to an Ellsworth area Health club for employees who choose to improve their physical condition up to \$250 per year.

ARTICLE 13. INSURANCE AND PENSION

Section 1. Each employee enrolled in one of the health insurance plans offered by the City will contribute weekly towards the premium at a rate yet to be determined.

Section 2. The employee may elect to participate in the International City Management Association Retirement program offered by the employer in lieu of the MainePERS program

offered by the City. The Employer's contribution shall be 7.25%. The employee shall contribute no less than 6.5%. The employees may opt to participate in the available MainePERS plan, at a rate set by MainePERS annually on July 1.

ARTICLE 14. RETIREMENT HEALTH SAVINGS

The City shall establish an ICMA Retirement Health Savings (RHS) Plan that will be funded as follows:

- Employees shall contribute 1% of their gross wages to the account through a payroll deduction.
- The City shall contribute :
 - 2.5% of the employees yearly gross wages
- If the employee limits use of sick time to four days or less per year, the City will contribute three days to the RHS account.
- At the end of each employment year, any unused vacation time will be contributed.
- Employees shall be eligible to make withdrawals from the current RHS account upon separation from the City of Ellsworth. Or at age fifty-five (55), if they were enrolled in the original RHS plan

ARTICLE 15. DISCIPLINE AND DISCHARGE

See CHAPTER VIII, Section 1.

ARTICLE 16. SETTLEMENT OF DISPUTES

See CHAPTER VIII, Section 2.

ARTICLE 17. GENERAL PROVISIONS

Section 1. All references to employees in the Ordinance designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

Section 2. The City may pay up to \$11.50 towards the purchase of a meal by each employee working at a "mealtime" during a snowstorm or other emergency as this term is defined below. Instead of paying the meal allowance, the City may allow an employee to go home for the meal, or the City may provide a meal. The City may develop a voucher or receipt system to document the purchase of meals. All meals provided under this section shall be bought within the City limits of Ellsworth. Meals may be bought outside the city limits when the employee is required to be out of Hancock County on City business at least one hour before or after the regular noon mealtime. The Highway Foreman shall declare a "mealtime". It is the intent of the City to provide a meal to employees who have been working in an emergency and beyond the normal work schedule, and in particular, snowstorms, when the employee would otherwise be eating supper or breakfast at home. The Foreman shall declare a "mealtime" when, in his opinion, there is the likelihood employees will continue to work three hours beyond the "mealtime." The "mealtime" for supper shall be 6:00 PM, and the "mealtime" for breakfast shall be 6:00 AM. In the case of breakfast, a "mealtime"

shall be declared only if employees had been continuously at work since 4:00 AM. The Foreman shall adjust the time when a meal shall be eaten to fit the circumstances. Employees may have up to 20 minutes "on the clock" to eat a meal declared under this policy.

Section 3. The individual designated as the mechanic shall receive an annual tool allowance of \$250.00. The City will provide theft insurance for the mechanic's personal tools kept at the city garage.

The City agrees to provide certain commonly used basic tools for employee use. The City shall have the sole discretion regarding which tools to provide, but will accept suggestions from employees. The City shall have the sole discretion whether to replace lost tools. Tools must be signed out for use from the Department Head or his designee. An employee signing out a tool is responsible for the return of the tool.

Section 4. Protective Clothing. The Employer shall furnish protective clothing, such as rain suits or any type of protective device to the employees.

Section 5. Clothing Allowance. The City will provide each employee with four (4) summer weight shirts and four (4) winter weight shirts, so that an employee will have a total of eight (8) shirts at all times. If a shirt wears out, an employee may turn it in for a new shirt. The City will also reimburse each employee up to \$150 per fiscal year for the purchase of other protective clothing, limited to work pants and outerwear such as jackets and headgear. The City logo shall be displayed on all protective clothing. In addition, the City agrees to reimburse each employee up to \$300 per year for the purchase of appropriate safety-toed footwear.

Section 6. Protective Eyewear. The City will furnish each employee who wears prescription eyeglasses with 2 pair of Prescription Safety Glasses per three (3) year period. The cost of these glasses shall not exceed \$200 each. The second pair of protective wear shall be reimbursed only with the approval of the Highway Foreman.

Section 7. Flu Shots. Highway Department employees shall be provided yearly flu shots at the City's expense, if an employee chooses to have a flu shot. Flu shots are completely optional.

ARTICLE 18. EQUIPMENT TRAINING PROGRAM

The City will offer twelve (12) training sessions per year to train on equipment. Any interested employee will be required to sign up no later than the Friday before the scheduled training day requesting to participate and on what piece of equipment they want to be trained. If more than one piece of equipment is requested, the Foreman will select one of the requested pieces of equipment for training that month. If no employees sign up for a session, the City shall not be required to hold that session. Scheduling of the training session is contingent upon several variables including but not limited to the availability of the piece of equipment and the weather.

The City will provide notice to the Employees of its intent to purchase capital equipment (cost over \$10,000) for the Department. The Employees may provide written comment within ten (10) work days to the Department Head or his designee, who will then provide it to the City Council.

ARTICLE 19. WORK RULES

Section 1. The employer may establish new rules, regulations, and changes in rules that do not violate the specific terms of this Ordinance.

Section 2. When existing rules and regulations are changed or new rules promulgated, they shall be posted for ten (10) consecutive work days before becoming effective.

Section 3. Employees shall comply with all reasonable work rules.

Section 4. Any unresolved complaint as to the reasonableness of any new or existing rule, or any complaint involving discrimination in the application of new or existing rules shall be resolved through the grievance procedure.

ARTICLE 20. MANAGEMENT RIGHTS

Section 1. The Employer retains all rights and authority to manage and direct its employees, except as otherwise abridged, modified, or delegated by the provisions of this Ordinance.

Section 2. Such rights shall include but not be limited to the operation and management of the department, hiring, directing, transferring, promoting, suspending and discharging for just cause, or otherwise disciplining employees. Further, management has the right to reduce or expand the work force, establish work schedules, introduce new and/or improved or changed methods of work or facilities, and to establish, change or eliminate jobs, work tasks, or positions.

Section 3. The Employer's not exercising any function or right hereby reserved to it, or the exercising of such functions in a particular way, shall not be deemed a waiver of its rights to exercise such function or preclude the Employer from exercising the same in some other way not in conflict with the provisions of this Ordinance.

Section 4. Nothing in this Article shall be construed to deprive the employees of any rights specifically set forth in this Ordinance, or to deprive them of the right of the grievance procedure herein.

ARTICLE 21. ADDITIONAL PROVISIONS

The following Side Letters of Agreement between the City of Ellsworth and the Ellsworth Highway Unit Council #93, AFSCME, AFL-CIO, are incorporated herein by reference. To the extent that there is any conflict between a Side Letter and this Ordinance, the language contained in a Side Letter shall control.

1. Side Letter regarding the Highway Foreman, attached hereto as "Side Letter 1";
2. Memorandum from Michelle Beal, City Manager, to Adam Wilson, Unit Chair, dated December 31, 2013, regarding ICMA RHS Plan, attached hereto as "Side Letter 2"; and
3. Side Letter regarding the Harbor Master/Equipment Operator/Truck Driver, attached hereto as "Side Letter 3".

SIDE LETTER AGREEMENT FOR THE COLLECTIVE BARGAINING AGREEMENT

BETWEEN

CITY OF ELLSWORTH

AND

ELLSWORTH HIGHWAY UNIT Council #93, AFSCME, AFL-CIO

The City of Ellsworth ("City") and the Ellsworth Highway Unit represented by Council #93 AFSCME, AFL-CIO ("Union"), have an existing labor agreement ("Agreement") signed in 2011 which covers certain employees in the City's Highway Department. The Highway Department is supervised by a Highway Foreman.

According to Appendix A of the Agreement, employees are classified as either Equipment Operators or Truck Drivers. Following a meeting on May 16, 2012, the City and Union agreed, by a Side Letter, to include the position of "Harbor Master/Equipment Operator/Truck Driver" in the unit. Collectively, the employees are "Bargaining Unit Members."

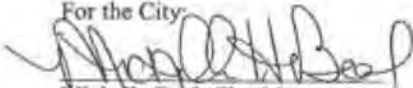
On October 18, 2012, the City and the Union met to discuss and negotiate the various aspects of the duties of the Highway Foreman. The City and the Union agreed to the following:

- The City agrees to create an additional Equipment Operator position and fill the position with a qualified individual pursuant to the Agreement.
- The position of Highway Foreman is recognized to be a supervisory position and exempt from coverage of the Agreement.
- The Highway Foreman will not be included on the Overtime Call List for Bargaining Unit Members.
- The Highway Foreman is primarily responsible for operating the grader during snowstorms. At the conclusion of snowstorms, if additional clean up is necessary, Bargaining Unit Members qualified by management to operate the grader in those conditions will be primarily responsible for any grader work that is necessary during the "Work Day" as defined in Article 9 of the Agreement. If no qualified Bargaining Unit Members are willing and able to perform the grader work, the Highway Foreman will perform the grader work.

- Except in situations where there are no qualified Bargaining Unit Members willing and able to perform Overtime work, and except during snowstorms involving grader work, the Highway Foreman will not perform Bargaining Unit work outside of the "Work Day" as defined in Article 9 of the Agreement.

It is the Parties' intent that any employment issues not addressed by this Side Letter are to be governed by the Agreement and City personnel policies.


For the City:


Michelle Beal, City Manager

For the Union:


Sylvie Perry, AFSCME Staff Representative


Adam Wilson, Unit Chair


Dustin Leyendecker, Chief Steward

Date: 11/13/12

Date: Nov 7 12



City Manager

1 City Hall Plaza ♦ Ellsworth, ME 04605-1942
Phone (207) 669-6616 ♦ Fax (207) 667-4908
www.ellsworthmaine.gov

MEMO

To: Adam Wilson, Unit Chair, Ellsworth Highway Unit Council #93
From: Michelle Beal, City Manager
Date: 12/31/2013
Re: ICMA RHS Plans

This letter is to memorialize an understanding regarding a change to be made to the Retirement Health Savings Plan (RHS) provided by ICMA/RC and its affect on the existing labor contract between the City of Ellsworth and the Ellsworth Highway Unit Council #93 which is affiliated with the AFSCME, AFL-CIO.

Certain provisions of the Patient Protection and Affordable Care Act require that the City make changes to the existing RHS Plan to ensure that the plan remain in compliance with a prohibition on annual lifetime limits. There is a provision in the Affordable Care Act that limits healthcare reimbursements to retirees only for those plans that are restricted to the available amount in an employee's account. This means that after December 31, 2013, RHS account funds will no longer be available to employees while they are still employed by the City; money can only be accessed at the time that employment with the City has ended.

According to the guidelines recently released by the Department of Health and Human Services, Department of Labor, and Internal Revenue Service the City has the following plan design change options:

1. Amend the RHS Plan so that medical expense reimbursements may only be received following separation from employment with the City.
2. Establish a new retiree-only RHS Plan for contributions made after December 31, 2013. The balances in the existing RHS Plan would be exempt from the retiree provision which means that funds that are in the existing RHS Plan as of December 31, 2013 would be grandfathered and could be used for healthcare reimbursement by the employee before employment ends.


3. Amend the RHS plan so that only medical expense reimbursements allowed are for "excepted" benefits such as dental and vision. Regular healthcare costs would not be eligible for reimbursement.

The City and Union are in agreement that the best solution to this issue is option 2. The City will set up new RHS accounts for current employees and will maintain the existing RHS accounts ("Grandfathered RHS Accounts") separately. However, no contributions will be deposited to these Grandfathered RHS Accounts after December 31, 2013.

The Union and its members acknowledge that there is a provision in Article 17-A of the Union contract that states the following: "Employees shall be eligible to make withdrawals from RHS accounts upon separation from the City of Ellsworth or at age fifty-five (55)." Notwithstanding the words of this provision, the Union, its members, and the City of Ellsworth agree that the "age fifty-five" provision is available only to those employees with a balance in their Grandfathered RHS Accounts, if any, until the balance is depleted.

The Union, its members, and the City of Ellsworth agree that this letter serves as an understanding of the mutually agreed upon change to the RHS plan and any required wording change to the Union contract pertaining to this issue will be discussed during the next contract negotiations.

For the City:



Michelle H. Beal, City Manager

For the Union:



Adam Wilson, Unit Chair

SIDE LETTER AGREEMENT FOR THE COLLECTIVE BARGAINING AGREEMENT

BETWEEN

CITY OF ELLSWORTH

AND

ELLSWORTH HIGHWAY UNIT Council #93, AFSCME, AFL-CIO

The City of Ellsworth ("City") and the Ellsworth Highway Unit represented by Council #93 AFSCME, AFL-CIO ("Union"), have an existing labor agreement ("Agreement") signed in 2011 which covers certain employees in the City's Highway Department. According to Appendix A of the Agreement, employees are classified as either Equipment Operators or Truck Drivers.

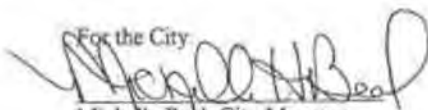
The City has had a full-time seasonal harbor master position. The City proposed modifying the harbor master position by combining it with a position in the Highway Department. When the harbor is open, the expectation would be that the individual would work exclusively at the harbor. Once the harbor closes, the employee would work within the Highway Department.

On May 16, 2012, the City and the Union met to discuss and negotiate the inclusion of this position in the existing Agreement. The City and the Union agreed to following specific provisions regarding this position.

- The position will be called "Harbor Master/Equipment Operator/Truck Driver"
- A wage scale will be created with Steps A through I as set forth in the existing Agreement for Equipment Operators. Effective July 1, 2012, the wages for the position will be \$.35 per hour greater than the wages for Equipment Operator effective July 1, 2012 for each Step. Effective July 1, 2013, the wages for the position will be \$.35 per hour greater than the wages for Equipment Operator effective July 1, 2013 for each Step.
- From May 15th until the harbor closes, but not later than October 31st of each year, the employee will work exclusively at the harbor. The hours for the position will be 9 hours per day from 8 a.m. until 5 p.m. During the remainder of the year, the individual's hours are governed by Agreement as set forth for Equipment Operators and Truck Drivers.
- From May 15th until the harbor closes, but not later than October 31st of each year, the work week is from Sunday to Thursday. During the remainder of the year, the individual's hours and working conditions are governed by the Agreement as set forth for Equipment Operators and Truck Drivers. However, on an as-needed basis during this period of the year, the Harbor Master/Equipment Operator/Truck Driver may be required to perform off-season duties related to maintaining the harbor.

- The City will supply a golf-style shirt to the employee in this position for wear while working at the harbor. The employee shall supply other appropriate attire that meets applicable safety regulations.
- While working at the harbor, the Harbor Master/Equipment Operator/Truck Driver shall have access to the harbor master boat to fulfill duties.
- While working at the harbor, the Harbor Master/Equipment Operator/Truck Driver may be required to work overtime. However, for overtime that is not required to be performed by the Harbor Master/Equipment Operator/Truck Driver himself or herself, the City reserves the right to assign that overtime work to part time employees or others, at the City's sole discretion.
- For non-City special events at the harbor, the Harbor Master/Equipment Operator/Truck Driver gets first choice to fulfill this work. The Harbor Master/Equipment Operator/Truck Driver will be paid \$30 per hour for this work. If the Harbor Master/Equipment Operator/Truck Driver declines this work, the work will then be offered to part time employees. If part time employees decline this work, it will then be offered to other employees in the Highway Unit. If the work remains unfilled after this, the Harbor Master/Equipment Operator/Truck Driver shall be required to perform this work.
- The Harbor Master/Equipment Operator/Truck Driver does not have supervisory responsibilities.
- The Harbor Master/Equipment Operator/Truck Driver is supervised by the Public Works Director.
- The Parties agree that the position may be advertised to the public, but the position shall be posted and filled per ARTICLE 4 Section 3 of the Collective Bargaining Agreement. The City has exclusive right to determine who shall be hired for this position.

It is the Parties' intent that any employment issues not addressed by this Side Letter are to be governed by the Agreement and City personnel policies. Furthermore, the Parties recognize this is a new and unique position, and that issues may arise that were not foreseen. The Parties agree it is in their mutual interest to resolve any issues that arise and agree to participate in labor management meetings, as necessary, in an effort to resolve such issues.

For the City

 Michelle Beal, City Manager

For the Union:

 Sylvie Perry, AFSCME Staff Representative

Dated _____

Dated _____

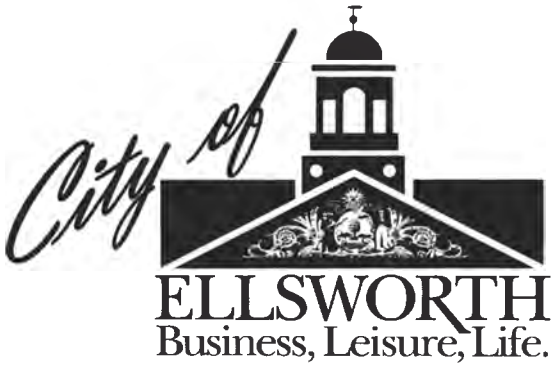
(8/27/17) (2018-0017)

City of Ellsworth Ordinances

Chapter 35

**Street Design and
Construction Standards
Ordinance**

This ordinance was repealed. See Chapter 56, Article 0900.



CHAPTER 37

SPECIAL AMUSEMENT PERMIT ORDINANCE

The City of Ellsworth hereby ordains that an ordinance entitled "Special Amusement Permit Ordinance of the City of Ellsworth" be hereby adopted as follows:

ARTICLE I TITLE, PURPOSE AND DEFINITIONS

Section 101. Title

This ordinance shall be known and may be cited as the Special Amusement Permit Ordinance of the City of Ellsworth.

Section 102. Purpose

The purpose of this Ordinance is to control, as required by Title 28A, Section 1054, MRSA, as amended, the issuance of Special Permits for music, dancing or entertainment in facilities licensed by the State of Maine, to sell liquor in the City of Ellsworth.

Section 103. Definitions

103.1 Entertainment. For the purposes of this Ordinance, "entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees if the licensed premises whose incidental duties include activities with an entertainment value.

103.2 Licensee. For the purposes of this Ordinance, the term "licensee" shall include the holder of a license issued pursuant to the provisions of Title 28, MRSA, Liquors, as amended, or any person, individual, partnership, firm, association, corporation or other legal entity acting as agent or employee of any holder of said license.

ARTICLE II GENERAL

Section 201. Permit Required

No licensee for the sale of liquor or malt liquor to be consumed on the licensed premises, situated in the City of Ellsworth, shall permit on said licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the City Council of Ellsworth, a special amusement permit signed by at least a majority of the members of said City Council.

Applications for all special amusement permits shall be made in writing to the said City Council and shall state the name of the applicant; his residence address; the name of the business to be conducted; his business address; the nature of his business; the location to

Chapter 37 - Special Amusement Permit Ordinance

be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be needed by the City Council in the issuing of the permit, including but not limited to a copy of the applicant's current liquor license.

No permit shall be issued for any thing, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, or rules and regulations of the City of Ellsworth.

The fee for a special amusement permit shall be Ten Dollars (\$10.00).

The City Council shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, hold a public hearing within 15 days of the date the request was received, at which the testimony of the applicant and that of any interested members of the public shall be taken.

The City Council shall grant a permit unless it finds that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate municipal ordinances, or rules and regulations, articles or bylaws.

A permit shall be valid only for the license year of the applicant's existing liquor license, *and a permit shall not be issued until evidence of a valid Maine State Liquor License has been issued to the applicant is presented.

201.1 Classes of permits. Special amusement permits granted by the City Council shall be limited to the following classes:

Class A – Single Instrumentalist without mechanical amplification.

Class B – Single Instrumentalist and Vocalist without mechanical amplification.

Class C – One or more vocalists and/or instrumentalists without mechanical amplification.

Class D – Any one of the above with mechanical amplification.

Class E – Dancing with any of the above or accompanied by music produced by radio or other mechanical device.

and any permit granted shall be for one of the above noted classes. A licensee shall not permit on the licensed premises, any music, dancing or entertainment which exceeds that permitted by the class of his permit, during the period for which his permit is valid as otherwise determined by this ordinance.

During the period for which his license is valid, the licensee may reapply for a new special amusement permit, if he elects to permit dancing, music or entertainment which exceeds that permitted by the current permit. Such reapplication shall be governed by all

the provisions of this Ordinance with respect to applications for a special amusement permit in general including the payment of the permit fee of \$10.00. A violation of this section by a licensee shall be grounds to revoke or suspend his permit and/or to refuse to grant a permit upon subsequent application by the same licensee.

201.2 Applications. The application for a special amusement permit shall set forth the type of music and entertainment intended by the applicant to be permitted on the licensed premises and whether dancing is permitted.

Section 202. Inspections. Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision, including this ordinance, or State law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official or employee of the municipality authorized to make the inspection at any reasonable time that admission is requested.

Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any ordinance provision or State law, it shall be the duty of the licensee, or the person in charge of the premises, to give any authorized officer, official or employee of the municipality requesting the same, sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the City Council may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official or employee to make an inspection to take sufficient samples for analysis, or who interferes with such officer, official or employee while in the performance of his duty. Provided that no license or special amusement permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

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

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

Section 204. Permit and Appeal Procedure

204.1 Any licensee requesting a special amusement permit from the City Council shall be notified in writing of its decision no later than fifteen (15) days from the date his request was received.

In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit within 30 days after an application for a permit which has been denied, except with the consent of the City Council.

204.2 Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the Ellsworth Board of Appeals as defined in Title 30, Section 2411, MRSA, as amended. The Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety and welfare, or that the denial, revocation or suspension was not based by a preponderance of the evidence, on a violation of any ordinance, article, bylaw, or rule or regulation of the municipality.

Section 205. Admission. A licensed hotel, Class A restaurant, Class A Tavern or restaurant malt liquor licensee who has been issued a special amusement permit may charge admission in designated areas approved by the municipal special amusement permit.

Section 206. Conduct Constituting Offenses by Licensees.

206.1 Tumultuous Conduct. The licensee shall not knowingly allow on any licensed premises any person or persons to disturb, tend to disturb, or aid in disturbing the peace of others of ordinary sensibilities or to be disorderly, violent, tumultuous, offensive or obstreperous conduct; or permit to gather, a crowd, audience, or patrons to witness any entertainment, amusement or show so as to create a dangerous condition because of fire or other risks in derogation of the public health, comfort, convenience, safety or welfare.

206.2 Riots. The licensee shall not allow on any licensed premises any public entertainment or amusement or show of any kind which tends or is calculated to cause or promote any riot or disturbance.

206.3 Unnecessary Noise. The licensee shall not allow on any licensed premises the making, creation or maintenance of excessive, unnecessary, unnatural or unusually loud noises which disturb, annoy, injure, prejudice or endanger the comfort, repose, health, peace or safety of individuals or ordinary sensibilities or the public in general, or the property rights of others.

206.4 Nuisances. The licensee shall not allow any licensed premises to be so conducted or operated as to amount to a nuisance in fact under any ordinances, or any

Chapter 37 - Special Amusement Permit Ordinance

sections of any ordinances, articles, by-laws or rules and regulations of the City of Ellsworth or under any statutes of the State of Maine.

206.5 Prostitution and Public Indecency. The licensee shall not allow on any licensed premises or aid in, offer, agree to or allow in or near such licensed premises any prostitution, prostitutes, or any public indecency in derogation of any statutes of the State of Maine; or any meretricious display, or lewd act, or act of moral perversion, or knowingly receive or offer or agree to receive any person on such licensed premises for the purpose of performing a lewd act or an act of prostitution or moral perversion, or public indecency or to knowingly permit any person to remain on such licensed premises for any such purpose to aid, abet, allow, permit or participate in the commission of any such acts.

206.6 Gambling. The licensee shall not allow any licensed premises to be used or occupied for gambling or games of chance as prohibited by the statutes of the State of Maine or ordinances, articles, by-laws or rules and regulations of the City of Ellsworth.

206.7 Obscenity. The licensee, on any licensed premises, shall not:

1. Knowingly disseminate, distribute or make available to the public any obscene material; or
2. Knowingly make available to the public any obscene performance; or
3. Knowingly engage in commerce with materials depicting and describing explicit sexual conduct, nudity or excretion, utilizing displays, circulars, advertisements, or any other public sales efforts that promote such commerce primarily on the basis of their prurient appeal; or
4. Provide service to patrons in such a manner as to expose to public view:
 - a. The licensee's or any of his agents' or employees' genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
 - b. Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - c. Any portion of the female breast at or below the areola thereof; or
5. Knowingly promote the commission of any of the above listed acts of this Ordinance section.

For the purposes of this section, the following words and phrases shall have the following definitions:

Chapter 37 - Special Amusement Permit Ordinance

1. Obscene material or performance means any material or performance which:
 - a. To the average individual, applying contemporary community standards, the predominant appeal of the matter or act taken as a whole, is to prurient interest;
 - b. Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals;
 - c. Considered as a whole, lacks serious literary, artistic, political or scientific value;
2. Material. Means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.
3. Disseminate – means to transfer possession of, with or without consideration;
4. Knowingly – means being aware of the character and the content of the material;
5. Performance – means any preview, play, show, skit, film, dance or other exhibition or entertainment performed before an audience;
6. Available to the public – means that the matter, performance or act may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item, performance or act available merely by being a patron of or present in an establishment that is licensed to sell liquor;
7. Service to patrons – means the providing of services to customers, patrons or any other persons present on the licensed premises and shall include hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waitering and entertaining.

ARTICLE III

PENALTY, SEPARABILITY & EFFECTIVE DATE

Section 301. Penalty. Whoever violates any of the provisions of this ordinance shall be deemed guilty of a criminal offense and upon conviction thereof, shall be penalized by a fine not exceeding \$1,000.00 or by imprisonment for not more than 30 days or by both said fine and imprisonment.

Chapter 37 - Special Amusement Permit Ordinance

Any violation of this ordinance or any provision thereof shall be deemed a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

Section 302. Separability. The invalidity of any provision of this ordinance shall not invalidate any other part.

Section 303. Effective Date. The effective date of this ordinance shall be June 18, 1978.

CHAPTER 38

CITY OF ELLSWORTH BOARD OF APPEALS

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

I. ESTABLISHMENT. Pursuant to the provisions of Title 30, Section 2411, MRSA, as amended, there is hereby established a Board of Appeals for the City of Ellsworth.

II. ORGANIZATION. The Board shall consist of five (5) members and one associate, all of whom shall be residents of Ellsworth. The members and associate member of the Board shall be appointed by the City Council for terms of five (5) years. The five (5) year terms of the members shall be staggered such that the term of one member will expire each year. The term of the associate member shall be five (5) years. The associate member shall act in place of any member who may be unable to act due to conflict of interest or absence. The members of the Board shall annually elect one of their number, chairman to preside at all meetings of the Board and one of their number to serve as secretary.

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

III. JURISDICTION. The Board shall have the power to hear and decide any appeal by any person, affected directly or indirectly, from any decision, order, rule or failure to act of any officer, board, agency or other body where such appeal is necessary, proper or required. The Board shall not assert jurisdiction over any matter unless the City of Ellsworth has by ordinance specified the precise subject matter that may be appealed to the Board and the official or officials whose action or nonaction may be appealed to the Board. The Board shall hear any appeal submitted to it in accordance with Title 28, Section 702, MRSA, as amended, and the "Special Amusement Permit Ordinance of the City of Ellsworth".

IV. APPLICABILITY OF LAW. Except to the extent that they are inconsistent with the provisions of this Ordinance, all the provisions of Title 30, Section 2411, MRSA, as amended, shall apply to and govern the organization, procedures and jurisdiction of the Board of Appeals.

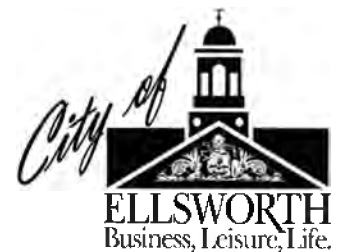
V. EFFECTIVE DATE. This ordinance shall become effective on June 19, 1978.

City of Ellsworth
Chapter 39

Historic Preservation Ordinance

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted
01/15/1979
Amended 10/15/1984
Repeal/Replace (Section 12 only) 12/20/1993
Amended 08/20/2012

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

2. Definitions.

2.1 Historic District. Any area which includes or encompasses such historic sites, historic landmarks, buildings, signs, appurtenances, structures or objects as may be designated in accordance with this Ordinance as appropriate for historical preservation.

2.2 Historic Site. Any parcel of land of special significance in the history of the City and its inhabitants, or upon which a historic event has occurred, and which has been designated as such in accordance with this Ordinance. The term “historic site” shall also include any improved parcel, archeological site, cemetery or part thereof, on which is situated a historic landmark, and any abutting improved parcel, or part thereof, used as and constituting part of the premises on which the historic landmark is situated as may be designated in accordance with this Ordinance.

2.3 Historic Landmark. Any improvement, building or structure of particular historic or architectural significance to the City relating to its heritage, cultural, social, economic or political history, or which exemplify historic personages or important events in local, state or national history as may be designated in accordance with this Ordinance.

2.4 Cultural Resources. Any one or group of buildings, sites, landmarks or districts listed with significance as determined by this ordinance. Cultural resources may also be referred to as “historic properties.”

2.5 Designation. The identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government.

2.6 Protection. A local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to this subsection.

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

3.1 Structures or sites at which events occur or have occurred that contribute to and are identified with or significantly represent or exemplify the broad cultural,

political, economic, military, social or sociological history of Ellsworth and the nation, including sites and buildings at which visitors may gain insight or see examples either of particular items or of larger patterns in the North American heritage.

- 3.2 Structures or sites importantly associated with persons significant to local, state or national history.
- 3.3 Structures or sites importantly associated with historic examples of a great idea or ideal.
- 3.4 Structures or structural remains and sites embodying examples of architectural types or specimens valuable for study of a period, style or method of building construction, of community organization and living, or of landscaping; or a single notable structure or a single site representing the work of a master builder, master designer, architect or landscape architect.
- 3.5 Structures contributing to the visual continuity of the historic district.
- 3.6 Those sites or areas on or eligible for listing on the National Register of Historic Places or National Historic Landmark.

4. Establishment of Designated Cultural Resources. Historic districts, historic sites or historic landmarks shall be established by amendment to Section 5 of this Ordinance, and no property shall be included within a district without written notification to the property owner or owners, nor become an historic site or historic landmark without written consent of the property owner or owners. All such amendments shall be initiated by the completion of an Application for Historic Preservation Designation directed to the Chairman of the Historic Preservation Commission.

4.1 Studies, Recommendations. Before making its recommendation concerning the proposed establishment of a historic district, historic site or historic landmark, the Commission may conduct studies and research on the proposal. The Commission will make a report to the Council on every request received. Drafts of the report shall also be mailed to the Maine Historic Preservation Commission for review and comment.

4.2 Public Hearing, Final Report. Before a final report is made to the Council, the Historic Preservation Commission shall hold a public hearing on the request, after due notice. Written notice of the proposal shall be given to the applicant, owners of all property abutting or to be included within the proposed designation, and all other persons found by the Commission to have a special interest in the proposal. After said public hearing, the Commission shall submit a final report with its recommendations to the City Council, not later than thirty (30) days after public hearing.

4.3 Action By City Council. After receipt of the Commission's recommendations, as provided above, the City Council at its next regular meeting shall consider and take all appropriate action on said proposed amendment in accordance with the City Charter, the Council's rules of procedure adopted pursuant thereto, and the laws of the State of Maine. Within ten (10) days after the designation of any historic district, historic site

or historic landmark, the owner of each property so designated shall be given written notice of such designation by the City Clerk.

4.4 The Ellsworth Historic Preservation Commission shall maintain records of all cultural resources established by the City Council.

5. Currently Designated Historic Sites, Districts and Landmarks.

Appendix I - Historic buildings, historic sites and landmarks designated by the City of Ellsworth.

Appendix II – Historic Districts designated by the City of Ellsworth

6. Historic Preservation Commission.

6.1 Members of the Historic Preservation Commission shall be appointed by the City Council which shall make such appropriations each year as may be necessary to fund the activities of the Commission and dependent on the availability of funds.

6.2 The Commission shall consist of five (5) members and two (2) alternates, who shall be residents or property owners of the City of Ellsworth. Appointments shall be made on the basis of demonstrated interest, ability, experience and desire to promote historic preservation in the City of Ellsworth within the meaning of Section 1 of this Ordinance. Where such professionals are available in the community, qualifications will conform to the Secretary of the Interior's Historic Preservation Professional Qualifications Standards. Information on commission members credentials will be kept on file and available to the public. Each commission member is encouraged to attend one informational/educational meeting per year, which will be sponsored by the MHPC or other historic preservation organization. In addition to the regular members of the Commission, the City Council may, at the request of the Commission, appoint other persons, not necessarily residents of Ellsworth, who shall serve on an advisory or consultant basis to assist the members of the Commission in the performance of their functions.

6.3 The Commissioners who are first appointed shall be designated to serve terms as follows; One for one (1) year, two for two (2) years, and two for three (3) years from the date of their appointment. Thereafter, said commissioners shall be appointed for terms of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term, in which case the appointment shall be for the remainder of the unexpired term. Alternates will be appointed by the City Council and will serve a one (1) year term. Alternates may be reappointed by the City Council. Members of the Commission shall serve without compensation. Persons appointed to serve in an advisory or consulting capacity shall hold office at the pleasure of the Council.

6.4 Such Commission shall elect annually a chairman, vice chairman and secretary from its own membership. A majority of the number of members appointed by the City Council shall constitute a quorum for the transaction of business.

6.5 Said Commission for its purposes may from time to time propose to the City Council amendments to its rules and regulations consistent with the intention of

this Ordinance and of the Maine Historic Preservation Commission. Duties of the Commission shall include but not be limited to the following:

6.5.1 Conducting, or causing to be conducted a continuing survey of cultural resources in the community according to guidelines established by the Maine Historic Preservation Commission;

6.5.2 Making recommendations for designation of local landmarks and historic districts to the City Council;

6.5.3 Establishing and using written guidelines for the conservation of designated local landmarks and historic districts in decisions on requests for permits for alterations, demolition, or additions to listed landmarks and buildings within historic districts;

6.5.4 Acting in an advisory role to other officials and departments of local government regarding the protection of local cultural resources;

6.5.5 Acting as liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and

6.5.6 Working toward the continuing education of citizens with the Certified Local Government's jurisdiction regarding historic preservation issues and concerns.

6.5.7 An annual report of the activities of the commission must be submitted to the City Manager, and to the MHPC.

6.5.8 The Commission shall follow the City of Ellsworth Code of Ethics/Conduct (Chapter 40).

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

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

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

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

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

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

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

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

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

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

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

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

9.3 The location of the subject property.

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

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

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

9.7 Photographs of the building involved and of adjacent buildings.

9.8 A site plan indicating improvements affecting appearance such as walls, walks, terraces, plantings, accessory buildings, signs, lights, and other elements. The Commission may waive the requirement for a site plan if the change involved would not affect the site.

10. Administrative procedures.

10.1 Notice of Owner. Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall take such action as may be reasonably required to inform, by U.S. Mail, the applicant, all persons owning abutting property and/or within 200 feet of the exterior boundaries of the real estate under consideration in the application and all such other persons as the Commission may deem appropriate of the pendency of the application, and shall give such persons an opportunity to be heard. For purposes of the notice required hereunder, the owners of the property shall be considered to be those against whom municipal taxes for the real estate are assessed.

10.2 Hearings. At the request of the applicant, or any other person receiving notice under section 10.1 above, or where the commission deems it necessary, a public meeting on the application may be conducted by the Commission.

10.3 Approval. If the Commission determines that the proposed construction, reconstruction, alteration, moving, or demolition is appropriate, it shall approve a Certificate of Appropriateness and return it to the Code Enforcement Officer for issuing of necessary permits.

10.4 Disapproval. If the Commission determines that a Certificate of Appropriateness should not be issued it shall note in the official meeting minutes the reasons for such determination and furnish the applicant an attested copy of the reasons, and the recommendations, if any.

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

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

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

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

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

d. The time and place of the hearing.

10.5.4 The Board shall, in addition to the notice in subsection 10.5.3 above, give written notice by regular mail or its equivalent to all abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the City Tax Assessor), the person making the appeal, the Historic Preservation Commission and Code Enforcement Officer.

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

11. Standards of Evaluation. The standards and requirements contained in this section, and the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used for review of applications for Certificates of Appropriateness and specifically as to procedures before demolition can take place.

11.1 Reconstruction, Alterations and Maintenance. A building or structure classified as a historic landmark, or any part thereof, or any appurtenance related to such structures, including but not limited to walls, fences, light fixtures, steps, paving and signs shall not be removed, reconstructed, altered or maintained, and no Certificate of Appropriateness shall be issued for such actions, unless they will preserve or enhance its historical and architectural character.

11.2 Demolition or Removal. A historic landmark, or any appurtenance thereto, shall not be demolished or moved and a Certificate of Appropriateness shall not be approved until either (a) such building or structure has been identified by the Commission as incompatible with the historic district in which it is located, (b) the property owner can demonstrate that maintenance of the structure creates financial hardship, or c), that the property was properly offered for sale, after notices as required have been posted, that there have been no bona fide offers made, and that no contract for sale has been executed with interested parties. Proper notice shall include posting on the premises of the building or structure in a location clearly visible from the street, notice published in a newspaper of general local circulation at least three (3) times prior to demolition, the final notice of which shall not be less than fifteen (15) days prior to the date of the permit, and the first notice of which shall be published no more than fifteen (15) days after the application for permit is filed. The owner shall for the period of time set forth and at a price reasonably related to its face market value, make a bona fide offer to sell such building or structure and the land pertaining thereto to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto. Prior to making such offer to sell, an owner shall first file a statement with the Historic Preservation Commission, identify the property, the offering price and the date the offer to sell shall begin. The time period set forth in this section shall not commence until such statement has been filed. The purpose of this section is to further the purposes of this Ordinance by preserving historic buildings which are important to the education, culture, traditions, and the economic value of the City and to afford the City, interested persons, historic societies or organizations the

opportunities to acquire or to arrange for the preservation of such buildings. The Commission may at any time during such stay approve a Certificate of Appropriateness in which event a permit shall be issued without further delay.

11.3 Construction of New Buildings and Structures in Historic Districts. The construction of a new building or structure within a historic district shall be generally of such design, form, proportion, mass, configuration, building material and location on a lot as will be compatible with other buildings in the historic district and with streets and open spaces to which it is visually related and in keeping with the area.

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

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

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

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

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

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

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

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

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

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

11.4.10 Directional Expression of Front Elevation A building shall visually compatible with the building, squares, and places to which it is visually

related in its directional character, whether this be vertical character, horizontal character or non-directional character.

12. Maintenance

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

12.1 The maintenance or repair does not involve a change in the design, material or outer appearance of the feature; or

12.2 The Building Inspector certifies in writing that the repair is required in the interest of public safety because of an unsafe or dangerous condition on the premises. Any modification under this subsection shall be permitted only upon a finding of the Commission that the proposed modification is the least disruptive manner of addressing the public safety concerns.

13. Penalties.

13.1 Violations. Any person who violates any provision of this Ordinance shall be guilty of a civil violation and shall be punished by a fine of not more than \$100 and not less than \$25. Each day that a violation continues shall be deemed a separate offense.

13.2 Additional Remedies. In addition to the remedies provided herein, the Commission and/or the Code Enforcement Officer are specifically authorized to institute any and all actions and proceedings, in law or in-equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this Ordinance or to prevent a threatened violation thereof.

Revisions adopted by the City Council on August 20, 2012

Appendix I Designated Historic Sites and Landmarks

(*asterisk indicates listing on the National Register of Historic Places)

Property	Address	Map/Lot	Date Accepted
*1. Ellsworth City Hall	1 City Hall Plaza	Map 136, Lot 189	9/17/79
*2. First Congregational Church	2 Church Street	Map 136, Lot 183	4/11/88
3. Old City Burying Ground	State Street	Map 136, Lot 182	9/17/79
*4. Ellsworth Public Library	20 State Street	Map 136, Lot 59	9/17/79
5. Ellsworth Soldier's Monument (Civil War) and Town Common	Bridge Hill intersect.	Map 133, Lot 33-1	4/28/80
*6. Old Hancock County Courthouse Old County Registry of Deeds	6 Court Street	Map 133, Lot 33	10/15/79
7. Judge John A. Peters, Jr. House	12 Maple Street	Map 134, Lot 213	4/28/80
8. Mary A. Lord House	1 Maple Street	Map 133, Lot 34	8/20/79
*9. Charles Jarvis Homestead	10 Surry Road	Map 134, Lot 226	12/17/79
10. Alexander B. Black House	6 Main Street	Map 134, Lot 10	9/17/79
11. The White Pillars (Geo. Herbert, Jr.)	88 Bucksport Road	Map 133, Lot 13	9/17/79
*12. Woodlawn (Col. John Black House)	19 Black House Dr.	Map 26, Lot 57	
*13. Whiting/Whitcomb House	214 Main Street	Map 136, Lot 213	12/17/79
14. Austin/Wiswell House	210 Main Street	Map 136, Lot 212	12/17/79
15. Joshua R. Jordan House	24 High Street	Map 134, Lot 89	4/28/80
*16. Birdsacre (Cordelia Stanwood Homestead)	289 High Street	Map 21, Lot 14	10/15/79
17. George Herbert House	6 Laurel Street	Map 133, Lot 38	7/21/80
18. Andrew Peters House	70 State Street	Map 136, Lot 62	7/21/80
19. Odd Fellows Hall	29 Main Street	Map 134, Lot 191	12/15/80
20. Albert Hopkins House	61 Pine Street	Map 134, Lot 108	8/18/80
21. George Smith House	29 Surry Road	Map 133, Lot 2	12/15/80
22. Copp/Dorr House	65 Pine Street	Map 134, Lot 107	6/16/80
23. John Black, Jr. House	70 Surry Road	Map 133, Lot 52	6/16/80
24. Little Red Farm, Levi Foster	95 Bayside Road	Map 21, Lot 2	2/3/81
25. Erastus Redman Building	14 Water Street	Map 134, Lot 17	5/21/84
26. Dr. Harding House	194 Main Street	Map 136, Lot 209	6/16/86
27. Dr. Walter Haynes House	62 Pine Street	Map 134, Lot 103	6/16/86
28. Nathaniel Treworgy Homestead	479 Surry Road	Map 9, Lot 9	10/19/87
29. James Hopkins House	140 State Street	Map 138, Lot 2	
30. Commercial Building, Dutton Block	63 Main Street	Map 134 Lot 44	
31. Commercial Building, Dutton Block	61 Main Street	Map 134, Lot 45	
32. Henry A. Dutton House	198 Main Street	Map 136, Lot 210	11/18/96
33. Jeremiah Giles House	18 South Street	Map 134, Lot 193	12/15/86
*34. Old Hancock County Jail	40 State Street	Map 136, Lot 61-1	11/21/05
*35. The Grand Theater (Samuel Kurson)	167 Main Street	Map 136, Lot 258	9/21/09
36. Chamberlain House (Whitney House)	357 State Street	Map 042, Lot 10	6/20/16
37. Firlands (Paul & Theresa Ouellette)	70 Park Street	Map 136, Lot 131	6/20/16
38. General Bryant E. Moore Community Center	5 General Moore Way	Map 136, Lot 99	6/20/16

Appendix II Historic Districts

1. Union River Historic District

Adopted 07/19/1982, revised 10/12

Description: This district is located on State Street and includes the following Historic properties:

1. Ellsworth City Hall
2. First Congregational Church
3. Old City Burying Ground
4. Ellsworth Public Library
18. Andrew Peters House
34. Old Hancock County Jail

ELLSWORTH HISTORIC PRESERVATION COMMISSION
APPLICATION FOR CERTIFICATE OF APPROPRIATENESS: ELLSWORTH HISTORIC LANDMARKS

APPLICANT: _____ DATE: _____

ADDRESS: _____ PHONE: _____

LOCATION OF LANDMARK:

STREET ADDRESS: _____ MAP/LOT: _____

Relationship of applicant to property or site: _____

1. Please describe the proposed changes requiring a Certificate of Appropriateness by using the following as guidelines. Attach extra description, plans and photographs as needed.

- ____ a. Addition to existing structure.
- ____ b. Reconstruction of original structure or part of it.
- ____ c. Alteration to existing structure or site.
- ____ d. Removal of trim, elements, facing material, or part of the structure.
- ____ e. Addition or removal of a sign.
- ____ f. New construction.
- ____ g. Moving or demolition of a structure.
- ____ h. Changes to walkways, driveways, or landscape features.

2. Describe the nature and purpose of the proposed work:

3. Indicate which parts of the structure will be affected by the project: (Circle all that apply)
roof : exterior woodwork : siding : windows : exterior doors : other (describe)

4. How will the work be done?

- ____ a. Removal of existing material and replacement with new material.
- ____ b. Repair in kind, matching original feature.
- ____ c. Repair in kind, approximating original feature.

5. Describe the materials to be used:

6. In the case of additions to existing buildings, the applicant must submit architectural plans drawn to scale, and a site plan showing the structure in relation to existing structures. Please include a photograph of the structure.

7. In the case of improvements and changes to the exterior features of a structure, applicant must submit a site plan that includes the buildings and exterior features as they now exist, as well as the proposed alterations. Please provide a photograph of the structure.

8. In the case of a sign, the applicant must submit a photograph of the whole building indicating where the sign will be placed, and a scale drawing of the sign, including lettering.

Application to be returned to the Ellsworth Historic Preservation Commission, Ellsworth City Hall, 1 City Hall Plaza, Ellsworth, ME 04605. The Commission will meet to discuss the application within 60 (sixty) days, and may request a meeting with the applicant.

Signature of Applicant: _____

Date received: _____ Action taken by Commission: _____

ELLSWORTH HISTORIC PRESERVATION COMMISSION
Ellsworth City Hall, 1 City Hall Plaza, Ellsworth, ME 04605

APPLICATION FOR HISTORIC PRESERVATION DESIGNATION

DATE: _____

NAME OF BUILDING/SITE: _____

ADDRESS _____

MAP/LOT _____
ZONE _____

TYPE OF DESIGNATION DESIRED, IF KNOWN (circle one)

HISTORIC LANDMARK HISTORIC DISTRICT HISTORIC SITE

APPLICANT(S):

(print) _____ (sign) _____

ADDRESS AND PHONE NUMBER OF APPLICANT(S):

_____ Phone: _____

APPLICATION SUPPORTING DATA:

Using the guidelines below, please provide information about the property. The Commission needs to know what is historically or architecturally significant and/or unique about the property, district or site.

1. Exact or approximate date of construction of structure or structures.
2. Brief description of the structure, including type of architecture, number of rooms, number of floors, adjacent or connecting structures. Include a listing of significant or unique features of the structure. Photographs are useful.
3. List earlier owners, earlier uses of the building if applicable, any historic significance.
4. Please include a copy of the deed.

ELLSWORTH HISTORIC PRESERVATION DESIGNATION APPLICATION – page 2

Include the signed Consent Form if the applicant is not the owner of the property being considered for historic designation. Include consent of the Mortgagee if the property has a lien holder.

CONSENT

I (We) _____, of _____, owner(s) of buildings and land, located at _____ Ellsworth, Maine, hereby consent to this property being recommended by the Ellsworth Historic Preservation Commission for designation by the Ellsworth City Council as either a Historic Site or Historic Landmark in accordance with the Ellsworth Historic Preservation Ordinance, Chapter 39, as amended.

Date: _____ Signature(s) _____

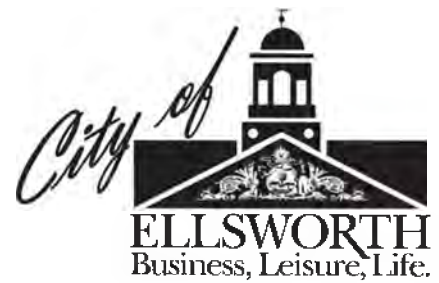
I, (We) _____, Mortgagee(s) also consent.

Date: _____ Signature(s) _____

CHAPTER 40
CODE OF ETHICS/CONDUCT
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Repealed/Replaced 02/14/2011

Section 1. DECLARATION OF POLICY

A Code of Ethics is hereby established for all City Officials in order to ensure that the proper operation of City government includes:

- That City Officials be fair, impartial and responsive to the needs of the people and each other in the performance of their respective functions and duties.
- That decisions and policy be made within the proper channels of the City's governmental structure.
- That public office not be used for personal gain.
- That City Officials maintain a standard of conduct that will inspire public confidence and the integrity of the City's government.

Section 2. STANDARDS OF CONDUCT

The purpose of this code is to establish ethical standards of conduct of all City business. To that end, City Officials shall strive to perform their duties with professionalism, endeavor to avoid even the appearance of impropriety wherever practicable, and conduct themselves with utmost civility and respect for members of the public, City staff, and other City Officials.

Section 3. PERFORMANCE OF DUTIES

- City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, boards, commissions, and committees, governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.
- Stewardship of the public interest shall be the City Official's primary concern, working for the common good of the citizens of Ellsworth, and avoiding actions that are inconsistent with the best interests of the City. All persons, claims, and transactions coming before the City Council or any City board, commission, or committee, shall be assured of fair and equal treatment.
- City Officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the laws of the nation, state, and municipality, and to carry out impartially these laws in the performance of their public duties to foster respect for all government. These laws include, but are not limited to, the United States, the State of Maine, and City of Ellsworth ordinances.
- City Officials shall prepare themselves for the public issues, listen courteously and attentively to all public discussion before the body, and focus on the business at hand. Officials shall refrain from interrupting other speakers, making personal comments not

germane to the business of the body or otherwise interfere with the orderly conduct of meetings.

- City Officials shall give due consideration to the objectives expressed by the electorate and the programs developed to attain those objectives.
- City Officials shall base their decisions on the merits and substance of the matter at hand.

Section 4. ATTENDANCE POLICY

The purpose of this attendance policy is to ensure the highest standard in the performance of City Official functions. In recognition of these goals, the following attendance policy is established:

- a) Attendance is expected at all Council, Board or Commission meetings including special meetings, emergency meetings, workshops, and budget workshops. When a City official cannot attend a meeting, the member must contact the Council/Board/Commission Chair or its designee in advance.
- b) Committee Meetings – It is expected that City Officials not miss more than 50% of overall assigned meetings. City Officials shall have the option to be replaced as a committee member if the Official is unable to meet the demands of committee attendance.

Section 5. CONFLICTS OF INTEREST

- City Officials shall not participate directly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the City, and the award of any contracts with the City, where there is knowledge of financial interest or special interest other than that possessed by the general public or if the purchase or award is held by:
 - a) The City Official or a relative of the Official.
 - b) A Business in which the City Official or a relative serves as an officer, director, trustee, partner or employee in a supervisory or management position.
 - c) Any other person or business with whom the City Official or a relative are in business or are negotiating or have an arrangement concerning future employment.
- City Officials shall not participate by means of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any employee or applicant for employment where the applicant is:

- a) A relative of the City Official.
 - b) A person with whom the City Official or a relative is in business.
-
- City Councilors shall not appear on behalf of any third party before the City Council or any City department, board, commission, or other such agency of the City. Other City Officials shall not appear on behalf of any third party before the board, commission, or other such agency of which that Official is a member. No City Official, including City Councilor shall represent a third party in any action, proceeding, or litigation in which the City is a party. Nothing herein shall prohibit any City Official from representing themselves in a personal capacity before the City Council or any City department, board, commission, or other such agency of the City.
 - City Officials shall not participate in any political activity which would be in conflict or incompatible with the performance of their official functions and duties of the City.
 - City Officials shall not use official authority or position for the purposes of influencing or interfering with or affecting the results of any election.
 - City Officials shall not solicit any assessments, contributions, or services for any political party from any employee in the municipal service if the person soliciting holds a compensated appointive City position
 - City Officials shall not distribute pamphlets or handbills while performing their official functions and duties with the City.

Section 6. DISCLOSURE OF INTEREST IN AGENDA ITEMS

Any City Official, who believes there is a conflict of interest as defined in Section 5 above, shall disclose the nature and extent of such interest and have it recorded on the record of the meeting at which it arises. Once such disclosure has been made, the City Official shall refrain from deliberation or voting on the item concerned.

Section 7. DISCLOSURE OF CONFIDENTIAL INFORMATION

- City Officials shall not, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the City nor shall any Official use such information to advance the financial or private interest of the Official or others.
- Information received and discussed during an executive session shall be considered within the constraints of this, and shall not be disclosed to any third person unless permitted by affirmative vote of the body.

Section 8. GIFTS AND FAVORS

City Officials shall not accept any valuable gift, whether in the form of service, loan, thing, or promise:

- a) from any person and/or business which to the City Officials knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City;
- b) that tends to influence the Official in the discharge of official duties.
- c) City Officials shall not grant in the discharge of official duties any favor, service, or thing of value.

Section 9. USE OF CITY PROPERTY / PUBLIC RESOURCES

- City Officials shall not use or permit the use of any City owned property for private purposes including but not limited to:
 - a) City Vehicles
 - b) City Equipment
 - c) City Buildings
- A City Official may only use the City's name, letterhead, logo, or seal when it would be perceived as representing the City of Ellsworth or the body as a whole and only with prior consent of the Council or designee.
- City Officials shall not utilize the City's name, letterhead, logo, or seal for the purpose of endorsing any political candidate, business, commercial product, or service. Nothing herein shall prohibit a City Official from endorsing any of the above in their personal capacity. A City Official may disclose the fact of their position provided it is made clear that they are acting in a personal capacity and not as a representative of the City.

Section 10. PROHIBITIONS

- Except where required by law, or pursuant to an agreement under the Interlocal Cooperation Act or other similar statutory provision, a Council member may not hold any other City position or City employment during the term for which the Council member was elected, and a former Council member is not eligible to be employed by the City for one year after the expiration of the term for which they are elected.
- No Council member may dictate or interfere in the appointment or removal of any City employee whom the City Manager is empowered to appoint or hire. The Council may express its views and discuss with the City Manager anything pertaining to appointment and removal of such employees.
- No Council member may publicly or privately give orders to any City employee who is subject to the direction and supervision of the City Manager, but the Council may express its views and discuss with the City Manager anything pertaining to any City employee.
- No City Official may in such capacity:
 - a) Unlawfully discriminate against any person with respect to any position or appointive City administrative office because of race or color, sex, sexual orientation, physical or mental disability, religion, political opinions or affiliations, or ancestry or national origin.
 - b) Willfully make any false statement or attempt to commit any fraud that would prevent the impartial execution of the laws of the state of Maine, the City of Ellsworth Charter, or any ordinance adopted by the Council.
 - c) Knowingly and willfully violate any provision of this Ordinance or any rules of ethics adopted by the City Council.

Section 11. DISCLOSURE STATEMENT BY CITY OFFICIALS

- City Officials shall annually and/or within 14 days of change provide to the City Clerk a physical address, mailing address, e-mail address, and contact telephone numbers.

- City Officials shall file with the City Clerk annually during the month of April a written statement under oath containing the following information, to the best of the Official's knowledge and belief:
 - a) The name of each person or business doing business with the City in an amount in excess of one thousand dollars (\$1,000) during the preceding calendar year from which such Official or a relative has received money or other thing of value in an amount in excess of one thousand dollars (\$1,000) during the preceding calendar year, including campaign contributions.
 - b) The City Treasurer shall provide a list of the persons or businesses doing business with the City in an amount in excess of one thousand dollars (\$1,000) during the preceding year.
 - c) Income, financial investments, and deposits and account with commercial or savings banks, savings and loan associations, or credit unions shall not be considered to be a financial interest within the meaning of this section.

Section 12. REGULATION OF COUNCILOR CONDUCT

The purpose of this section is to establish procedures for the City Council to address the conduct of members of the City Council in accordance with Ellsworth City Charter, § 2.07(b) and determinations of vacancy under § 2.10(b).

- In the event that a member of the City Council reasonably believes that another member has violated or is violating any provision of the Code of Ethics or any policy or rule established by the Council, the member of the City Council should attempt to informally address and resolve the matter with the other member if doing so is appropriate under the circumstances. If the matter is not resolved informally, the complaining member of the Council may ask for an executive session under the Maine Freedom of Access law to discuss a complaint against a City Official.
- The member of the Council against whom the complaint is being made shall be given reasonable advance notice of the meeting at which the matter will be discussed and the right to be heard. The member of the Council against whom the complaint is being made shall also have the option of having the discussion conducted in open session.

1. Action or nonaction on complaints.

- A. Following the Council discussion, a Council member in open session may, but is not required to, move to sanction the member against whom the complaint is being made.
- B. If the motion is seconded, the motion may be adopted by a Majority Vote (as defined in the City Charter).
- C. If the motion passes, the Council shall issue a brief public statement explaining the reason for the sanction.
- D. The Council may issue the following forms of sanctions (from least severe to most severe):
 - a. Oral Reprimand
 - b. Written Reprimand
 - c. Formal Sanction

2. Expulsion and determinations of vacancy.

- A. In the event that (1) a member of the Council has engaged in malfeasance, misfeasance, or nonfeasance in office of such severity that a Formal Sanction is insufficient to address the conduct and that justice leave no other alternative, or (2) the Council seeks a determination of vacancy based on abandonment of office, the Council may schedule a public hearing to determine whether to expel the member from the City Council and declare the position vacant.
- B. The public hearing shall be scheduled so as to give the member of the Council against whom the complaint is being made at least one week's advance notice. The member of the Council may be represented by counsel and shall have the right to offer testimony, present witnesses, and cross examine and rebut all witnesses and public comments.
- C. The Council may by Super-Majority Vote (as defined in the City Charter) expel a member from the City Council based on the record created at the public hearing under a clear and convincing standard of proof.
- D. The Council's decision to expel a member may be appealed to Superior Court in accordance with M.R.Civ.P. 80B.
- E. For the purpose of this section, the term "malfeasance, misfeasance, or nonfeasance in office" shall mean conviction of a felony criminal offense, a serious and significant violation of the Code of Ethics or other City Ordinance, or other conduct (or lack thereof) of such a nature as to cast serious and significant doubt regarding one's ability to carry out the functions of the office of City Councilor.

Section 13. SEPARABILITY

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this code.

Section 14. DEFINITIONS

- A. **BUSINESS:** Any corporation, partnership, individual, sole partnership, sole proprietorship, joint venture, or any other legally recognized entity organized for the purpose of making a profit.
- B. **CITY OFFICIALS:** Any and all persons appointed by the City Council or City Manager and/or elected by the voters of the City of Ellsworth, including but not limited to:
 - a) City Councilors
 - b) Library Trustees
 - c) Planning Board Members
 - d) Appeals Board Members
 - e) Members of Boards and Commissions
 - f) Any person whose office or position is deemed a municipal office by the laws of the State of Maine.
- C. **CITY EMPLOYEE:** Any individual working for, on a permanent or temporary basis, and drawing a salary, wages or stipend from the City of Ellsworth. The term “City Employee” shall not include consultants or special personnel providing services on a short-term contractual basis.
- D. **FINANCIAL INTEREST:** A direct or indirect interest having monetary or pecuniary value including, but not limited to, the ownership of shares of stock.
- E. **MALFEASANCE:** The performance by a City Official of an act that is legally unjustified, harmful, or contrary to law.
- F. **MISFEASANCE:** The misuse of power; misbehavior in office; the wrongful exercise of lawful authority.
- G. **NONFEASANCE:** The intentional failure to perform an official duty or a legal requirement.
- H. **PERSONAL INTEREST:** Any interest of the City Official or City Employee concerned as a resident, landowner, or taxpayer affected by the matter under consideration.
- I. **PHYSICAL ADDRESS:** A person’s street, street number, and municipality.
- J. **RELATIVE:** Any person who is related by blood or marriage, or whose relationship is similar to that of persons who are related by blood or marriage such as domestic partners, adopted children, and foster children.
- K. **SPECIAL INTEREST:** A person or group having an interest in a particular part of the economy and receiving or seeking special advantages thereafter to the detriment of the general public.

CHAPTER 41
ELECTRICAL INSTALLATION AND INSPECTION ORDINANCE

Section I. ENACTMENT AUTHORITY AND SCOPE

This Electrical Installation and Inspection Ordinance is enacted pursuant to 30-A M.R.S.A. ss4151 et seq. This Ordinance expressly applies to original installations of equipment and alterations to addition to existing equipment.

Section II. ELECTRICAL INSPECTOR

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

Section III. ELECTRICAL INSTALLATION PERMIT REQUIRED

A. No electrical equipment shall be installed in, altered, or added to any building, structure, or premises within the territorial limits of the City of Ellsworth unless an Electrical Installation Permit had been issued in conformity with this Ordinance.

B. No permit shall be required to do minor repair work such as, but not limited to, the following

- i. The replacement of fuses;
- ii. The installation of additional outlets;
- iii. The replacement of existing switches, sockets, outlets, and lamps;
- iv. Repairs to entrance service equipment; and
- v. Repairs or installation of radio and low voltage equipment.

C. Emergency work may be undertaken without first obtaining a permit. A permit must then be obtained as soon as is reasonably possible.

D. No major deviation may be made from the installation described in the permit without the prior written approval of the Electrical Inspector.

Section IV. APPLICATION FOR ELECTRICAL INSTALLATION PERMIT

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

A. In the event that the propose work is to be performed in a single-family structure by the owner of that structure.

B. In all other cases the applicant shall be the licensed master electrician employed to do the proposed work; a holder of a limited license who may obtain a permit within such limited licensee's are of expertise; or the general contractor for the construction project of which the proposed work is a part, providing that the contractor shall provide as part of the application the name, address, and license number of the licensed electrician employed to do the proposed work.

Section V. INVALIDATION OF ELECTRICAL INSTALLATION PERMIT

Any permit issued under this section shall become invalid if:

A. The authorized work is not commenced within six (6) months after issuance of the permit;

B. The authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work.

C. The authorized work is not completed within twenty-four (24) months after the issuance of the permit, or

D. The permit holder fails to correct a violation of any provision of the Ordinance with the time prescribed in the Notice of Violation.

Section VI. PERMIT FEES

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

<u>Proposed Work</u>	<u>Fee</u>
Signs	\$25.00
Change in size of entrance	\$25.00

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

Commercial structures \$50.00 or ½ of 1% of the cost of the job, but in no case less than \$50.00

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

² Amended by the City Council 06/10/02

Section VII. CONFORMITY TO NFPA CODE

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

Section VIII. CERTIFICATE OF ACCEPTANCE

A. The applicant, by obtaining a permit, consents to the inspection by the Electrical Inspector of work and equipment described in the permit at such reasonable times and as often as the Electrical Inspector deems reasonably necessary throughout the course of the authorized work so as to insure compliance with this Ordinance. A failure to permit such reasonable inspection is expressly made a violation of this Ordinance.

B. Prior to the sale, lease, use, or occupancy of any building, structure, portion of a structure, or premises for which an Electrical Installation Permit has been issued, the permit holder must secure a Certificated of Acceptance from the Electrical Inspector stating that the electrical equipment is in conformity with the standards set forth for electrical equipment in Section VII of this Ordinance. Prior to the issuance of the Certificate of Acceptance, the Electrical Inspector will inspect the property to see that all requirements under this Ordinance have been met. A Certificate of Acceptance must be issued or denied within two (2) working days of application for inspection by the permit holder. A failure to issue a Certificate within two (2) working days shall be deemed a denial of the request for certificate.

C. There shall be no charge for any such inspection, except in the case of inspection of commercial property. In the case of inspections of commercial property the permit holder may pay any difference between the ½ of 1% of the total actual cost of the installation is less than or equal to the fee originally paid for the permit, there shall be no charge for the inspection. In no case shall any portion of the permit fee originally paid be refunded.

Section IX. ENFORCEMENT

A. Upon the discovery of any electrical equipment, which does not comply with this ordinance, any person having the power and duty to enforce the provisions of this Ordinance may make a written complaint to the State Electrical Inspector in accordance with 32 M.R.S.A. ss1104.

B. Whenever any person having the power and duty to enforce the provisions of this Ordinance determines that there is a violation of any provision of this Ordinance, that a person shall give written notice of such violation to the property owner and the person making the installation, if known. Such written notice shall contain:

- i. A description of the building, structure, or premises in question in sufficient detail to identify it;
- ii. A description of the violation found and a citation to the provisions of this Ordinance or the NFPA Code violated;
- iii. The remedial action required for correction of such violation; and
- iv. A date by which such violation must be corrected.

C. The Code Enforcement Officer and/or his authorized agent(s), including but not limited to the Electrical Inspector, shall have the power and duty to prosecute violations of the provisions of the Ordinance to the extent permitted by law.

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

Section X. EFFECTIVE DATE

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

Adopted by the City Council July 17, 1989

With amendments through 1/14/02

**CHAPTER 42
CITY OF ELLSWORTH**

SOLID WASTE MANAGEMENT ORDINANCE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



**Adopted 4/15/1991
Repealed/Replaced 7/31/1995
Effective 8/14/1995
Adopted 5/20/1996
Effective 6/1/1996
Amended 10/21/2002
Amended 11/10/2003
Amended 4/21/2008
Repealed and replaced 10/17/2011
Amended May 20, 2013 effective 7/1/2013**

SECTION 1: AUTHORITY

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

SECTION 2: PURPOSE

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

SECTION 3: DEFINITIONS

The definitions set forth in 38 M.R.S.A. §1303-C apply to this ordinance and are incorporated herein. Any word not otherwise defined shall have its dictionary meaning.

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

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

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

Bulky Objects - abandoned vehicles, stoves and refrigerators, large furniture, tree trunks, stumps and brush

Commercial Solid Wastes - wastes that originate in wholesale, retail, or service establishments, such as office buildings, stores, markets, theaters, hotels and warehouses

Construction and Demolition Debris (CDD)-solid waste resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to: lumber, bricks, masonry, shingles, building materials, discarded furniture, asphalt, insulation, wall board, pipes, metal structures, and metal conduits and other similar materials. It excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes

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

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

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

governmental agency or unit having appropriate jurisdiction

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

Municipal Wastes - the combined residential and commercial wastes generated in a given municipal area

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

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

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

Sewerage Treatment Wastes - screenings, grease, scum and grit

Special Wastes waste designated by the Maine Board of Environmental Protection as Special Wastes as defined 38 MRSA 1303-C

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

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

SECTION 4: RULES AND REGULATIONS

4.0.0 General Requirements

4.0.1 All refuse shall be disposed in accordance with this Ordinance.

4.0.2 The City Manager shall have the authority to restrict the disposal of all types and volumes of refuse, if deemed in the best interests of the City.

- 4.0.3 Use of Ellsworth Transfer Station during non-operating hours without prior approval of the City Manager is prohibited.
- 4.0.4 No person, partnership or corporation, shall dispose of any refuse on any public property or roads except as allowed by this ordinance.
- 4.0.5 All loads coming into the Ellsworth Transfer Station shall be properly secured. This includes commercial and residential vehicles.

4.1.0 Materials Disposal Restrictions

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

SECTION 5: DISPOSAL OF SOLID WASTE

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

- A. City-provided collection service

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

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

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

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

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

B. Use of Ellsworth Transfer Station

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

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

C. Hire a Private Hauler

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

SECTION 6: FEES

6.0 Authority The City Council shall establish by order schedules of solid waste disposal charges to be charged for the use of the Ellsworth Transfer Station, which schedules may include different waste disposal charges for residents of the City, businesses located within the City, non-residents of the City, and commercial refuse collectors collecting solid waste within the City and may include different schedules for disposal of different kinds of solid waste.

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

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

SECTION 7: VIOLATIONS & PENALTIES

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

7.2 Municipal Costs of Enforcement In addition to the foregoing penalty provisions, any person violating any provision of this ordinance shall be liable to reimburse the City for costs of enforcement including reasonable attorney fees and court costs. This provision shall not preclude the City for seeking and obtaining equitable relief.

SECTION 8: SEVERABILTY

Each of these sections shall be construed as separate. If any section, sentence, clause, or phrase shall be held invalid for any reason, the remainder of that section and all other sections shall continue in force.

Adopted by the Ellsworth City Council on _____

Attest: _____ City Clerk

CHAPTER 43
TREE ORDINANCE

Section 1. Arbor Commission Established

The Arbor Commission is hereby established. The Arbor Commission shall consist of nine individuals appointed by the City Council. The purpose of the Arbor Commission is to undertake projects supporting the planting, maintenance, removal and pruning of trees on the streets or other public sites in the city.

Section 2. Master Tree Plan

The Arbor Commission shall have the authority to formulate a master street tree plan with the advice and approval of the City Council. The master street tree plan shall specify the species of trees to be planted on each of the streets or other public sites of the city, to which all planting shall conform thereto.

Section 3. Abuse and Mutilation of Public Trees

Unless authorized by the Arbor Commission, no person shall damage, cut, carve, transplant or remove any public tree, attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous, liquid or solid substance which is harmful to such trees to come in contact with them, or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of such tree. The city may recover the full cost of repair or replacement of such mutilated tree.

Adopted July 8, 1991

A true copy

Attest: Terri A. Kelley City Clerk

CHAPTER 44

MAINTENANCE OF CERTAIN PUBLIC EASEMENTS

1. Owners of property abutting the following private roads for which the City has in the past provided limited winter and/or summer maintenance have one (1) year from the date of the adoption to provide the City with a deeded public easement with a minimum width of 33 feet.

FR#	COMMON ROAD NAME	LENGTH	SERVICE
502	Graham Way	2,400'	Winter
420	Northeast Cove Road	6,300'	Summer
331	Scott's Neck Road	12,000'	Summer
304	Green Lake Road	7,400'	Summer
307	Cove Road	4,224'	Summer
		3,000'	Winter
303	Dan Force Road	1,500'	Summer/Winter
303B	Phillips Road	8,000'	Summer
		3,500'	Winter
303C	Orchard Road	4,480'	Summer
		2,640'	Winter
219B	Branchview Dr/Right	8,450'	Summer/Winter
219C	Branchview Dr/Left	4,200'	Summer/Winter
312	Walls Road	2,650'	Summer
311	Sargent Drive	7,000'	Summer/Winter
303D	Hogan Road	2,650'	Summer
303DD	Whitcomb Road	1,300'	Summer

2. All City maintenance will cease on those roads for which a deeded public easement is not given to the City within one year of the date of the adoption of this ordinance. Should a deeded public easement be provided within five (5) years of the date of the adoption of this ordinance, the City Council will reinstate city road maintenance services.

3. For those roads for which a deeded public easement is provided, the City shall continue to provide the following maintenance:

Summer: Provide labor and equipment for grading and ditching to allow for positive drainage.

Winter: Plow snow. Sanding may be provided on request of the road owners association representative at a cost to be set annually by the City Council.

4. The road owners association for each road for which a deeded public easement is provided is to maintain the road with gravel, culverts and brush cutting.

5 In the event that abutting owners grant a deeded public easement allowing public access to land or waters in conjunction with, and located at or near the far end of any public easement granted in accordance with Section 1 above, the City shall also provide, at the City's expense, gravel for maintenance purposes, replacement culverts, and brush cutting within the public easement.

6 No later than April 1 of each year, the City shall be notified in writing of the person responsible for road maintenance of each public easement for which limited road maintenance has been approved pursuant to this ordinance. It shall be the responsibility of this person to serve as a liaison with the City.

The person responsible for road maintenance shall be the clerk or other designee of a road owners association duly formed pursuant to title 23 M. R. S. A.. Sections 3101-3104.

7. The City Road Commissioner and road owners association representatives shall annually inspect each road for which the City provides maintenance. The Road Commissioner shall send a report by June 1 to the clerk or designee of the respective road owners association, detailing any deficiencies in the road that need correction. City road maintenance shall be discontinued for all roads on which the identified deficiencies have not been corrected by September 1 of that year. Maintenance will be reinstated upon correction of the deficiencies to the satisfaction of the Road Commissioner. A written appeal to the City Council of a Road Commissioner's decision under Section 7 of this ordinance may be made by the road owners association representative within thirty (30) calendar days of that decision.

8. Acceptance of public easements and providing limited maintenance pursuant to this ordinance shall not constitute acceptance of any road as a public way or City street. The provisions of this ordinance shall not modify any City road or street ordinance.

Adopted September 19, 1994

CHAPTER 45
REGULATIONS FOR THE INSTALLATION OF STREET LIGHTS

SECTION 1. PURPOSE

The purpose of this ordinance is to establish a policy and process for street lights installed and removed by the City of Ellsworth. This ordinance also establishes a policy and process for acceptance of a streetlight installed by an entity other than the City of Ellsworth

SECTION 2. STREET LIGHT POLICY

The purpose of street lights owned and/or rented by the City of Ellsworth is to provide for traffic and pedestrian safety along public ways. The major objective is to reduce motor vehicle and pedestrian accidents by illuminating hazards. Street lights shall also be used to illuminate city-owned property for security and safety purposes.

SECTION 3. STREET LIGHT COMMITTEE

The City of Ellsworth shall have a Street Light Committee to provide a method of determination for the installation or removal of streetlights and to assume responsibility of an existing streetlight.

- a. The Committee shall consist of the City Manager, two City Council members as appointed by the Council Chairman, two citizens of Ellsworth who represent the general public, and the Chief of Police.
- b. The Committee shall have the authority to consider and recommend action by the City Council on the need for removal and/or installation of street lights on the public ways of the City of Ellsworth. The Committee shall also have the authority to consider and recommend action on a request for the City to assume responsibility of an existing street light.
- c. The Committee shall make its decisions upon findings of fact by a majority of the Committee.
- d. Upon decision of the Committee, a recommendation shall be forwarded to the City Council for its action.

SECTION 4. PROCEDURE FOR STREETLIGHT CHANGES

- a. Any citizen of the City of Ellsworth may request the installation or removal of a street light. Additionally, a citizen may request the City assume financial responsibility of an existing street light.

1. The request for a street light change shall include the following information:
 - an application provided by the City and completed by the petitioner;
 - an identification of the public way and the pole on which the requested street light would be installed;
 - a description of the situation demonstrating the need for a street light;
 - proof of notification of immediate abutters and property owners within a 500 foot radius of the streetlight.
- b. Upon receipt of the application, the Street Light Committee shall review the information to evaluate conformance to the purpose and criteria of this ordinance.
- c. The Committee shall make its decision and a recommendation shall be forwarded to the City Council for action.
- d. Upon notification of the Committee, the City Council shall hold a public hearing and by Council Order, act on the request.

SECTION 5. INSTALLATION, ASSUMPTION OF FINANCIAL RESPONSIBILITY AND REMOVAL

- a. The City of Ellsworth may install, pay for, or assume financial responsibility for street lights in the following instances:
 - 1) lighting the intersection of a public way;
 - 2) bad curves or other serious road hazards where increased illuminations would ease the traffic hazard;
 - 3) lighting of areas with heavy evening pedestrian traffic.
- b. The City of Ellsworth shall not install, pay for, or assume financial responsibility for street lights in the following instances:
 - 1) Security of Private Property:
Illuminating private property (commercial, industrial, and residential) for security purposes is at variance with City policy.

2) Entrance to Private Drives:

Illuminating private driveways, business entrances, and entrances to private ways is not in accordance with City policy.

3) Private Ways:

City-installed street lights shall not be located on private ways, camp roads, or private driveways.

c. The City of Ellsworth shall only install or pay for a street light on an existing pole owned by the municipality or a public utility and which is located within a public right-of-way.

Adopted April 21, 2008

June 19, 1995 edition repealed/replaced with 4/21/2008 edition

A True Copy

Attest: _____ City Clerk

CHAPTER 46
PAID SEXUAL CONTACT ORDINANCE

SECTION 1. PURPOSE. The purpose of this ordinance is to prohibit certain acts for paid sexual contact within the City of Ellsworth in order to reduce the likelihood of criminal activity, moral degradation and disturbances of the peace and good order of the community.

SECTION 2. DEFINITIONS.

- (a) Sexual contact means any touching of the genitals or anus, directly or through clothing, or other covering, for the purpose of arousing or gratifying sexual desire.
- (b) Pecuniary benefit means any direct or indirect payment of money or any other object of value.

SECTION 3. SEXUAL CONTACT FOR PECUNIARY BENEFIT PROHIBITED

- (a) Engaging in, or agreeing to engage in, or offering to engage in sexual contact in return for a pecuniary benefit to be received by a person engaging in the sexual contact or by a third person is prohibited.
- (b) Providing or agreeing to provide a person for purposes of engaging in sexual contact in return for a pecuniary benefit to be received by a person engaging in the sexual contact or by a third person is prohibited.
- (c) Causing or aiding another person to engage in sexual contact in return for a pecuniary benefit to be received by a person engaging in the sexual contact or by a third person is prohibited.
- (d) Any person in control or possession of any place or premises, who permits the place or premises to be used as a site for any activity prohibited in subsections (a), (b) or (c) of this ordinance commits a violation of this ordinance.

SECTION 4. PENALTIES. The violation of any provision of this article shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action, including but not limited to revocation of any city license for a premises or business in which sexual contact for pecuniary benefit is transacted.

SECTION 5. SEVERABILITY. If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

If the City prevails in an action to enforce this ordinance, or an action to enjoin or abate any activity prohibited by this ordinance, it shall be awarded its reasonable attorneys fees, expenses and costs incurred in the action.

Adopted Oct. 16, 1995

CHAPTER 47 AN ORDINANCE REGULATING ACTIVITIES IN CITY OF
ELLSWORTH MUNICIPAL BUILDINGS AND MORE PARTICULARLY
PROHIBITING SMOKING IN MUNICIPAL BUILDINGS

WHEREAS, Title 22, Section 1580-A, MRSA regulates Smoking in Places of
Employment, and

WHEREAS, Title 22, Section 1542, MRSA regulates Smoking in Public Places, and

WHEREAS, Section 27, Chapter 34 of the Ellsworth Code of Ordinances is not in
compliance with these statutes, now,

THEREFORE, be it ordained as follows:

SECTION 1. The Ellsworth Code of Ordinance is hereby amended by deleting Section 27
Policy on Smoking in Chapter 34 PERSONNEL ORDINANCE and adding the following
new ordinance CHAPTER 47 ACTIVITIES IN MUNICIPAL BUILDINGS

Section 1. Smoking Prohibited

Smoking is prohibited within all municipal buildings in the City of Ellsworth.

SECTION 2. This ordinance shall be effective on the date of passage.

CHAPTER 47

ACTIVITIES IN MUNICIPAL BUILDINGS

Section 1. Smoking Prohibited

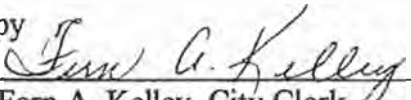
Smoking is prohibited within all municipal buildings in the City of Ellsworth.

Section 2. This ordinance shall be effective on the date of passage.

Adopted 11/18/96

A true copy

Attest:



Fern A. Kelley, City Clerk

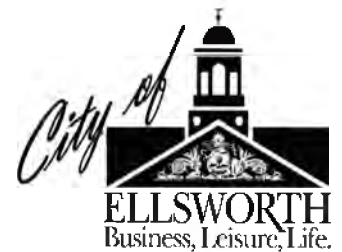
**City of Ellsworth
Chapter 48**

**ROTATIONAL TOWING
ORDINANCE**

A true copy –

Attest: Heidi-Noel Grindle

City Clerk



**Adopted 1/27/1997
Amended 2/23/1998
Amended 2/22/1999
Amended 8/12/2002
Amended 8/11/2003
Amended 9/19/2005
Amended 12/17/2012**

1. Purpose.

The City of Ellsworth is one of the largest customers for towing services in Hancock County. The City seeks to ensure that towing services used for police related towing meet minimum qualifications to ensure the safety and security of the public and their property while allowing for efficient and orderly towing. The City also seeks to ensure that qualified towers have equal access to business generated as a result of police tows.

2. Towing Rotation List Established.

- 2.1. A towing rotation list is hereby established. Any towing service holding a Statement of Qualification from the Chief of Police or his designee shall be eligible for inclusion on that list.
- 2.2. Any eligible towing service shall be included in the towing rotation list at the written request of that towing service submitted to the Chief of Police. That written request shall state that the towing service, and its owners its officers and employees, are familiar with the terms of this Ordinance and agree to be bound thereby.
- 2.3. The towing rotation list shall be used for all non-preference tows.
- 2.4. The Ellsworth Police Department shall call the towing service at the top of the towing rotation list for any non-preference tow. After being given or refusing a tow offer, the towing service will be placed at the bottom of the list.
- 2.5. The Ellsworth Police Department shall have the authority to call a towing service that outside of the towing rotation list in the following circumstances:
 - 2.5.1. It is necessary to impound the vehicle for law enforcement purposes.
 - 2.5.2. Public safety requires the immediate removal of the vehicle. Any towing service called under this section of the Ordinance shall be moved to the bottom of the towing rotation list.
 - 2.5.3. An error is made by the Ellsworth Police Department in calling rotation. Any towing service erroneously called under this section of the Ordinance shall be moved to the bottom of the towing rotation list.
 - 2.5.4. The vehicle to be towed is owned, leased or operated by the City of Ellsworth.

3. Application for Statement of Qualification.

A towing service seeking a Statement of Qualification for inclusion in the towing

rotation list shall submit an application therefore to the Chief of Police.

3.1. The following materials shall constitute a complete application.

- 3.1.1.** Completed and signed application form.
- 3.1.2.** The name, address and date of birth of each person employed as a driver or who otherwise has access to any secure storage area, or who is an owner, officer, partner or principal of the applicant.
- 3.1.3.** A description of the location, size and security features of the secure storage area at which towed vehicles shall be stored and released. This description shall be sufficiently complete that the Chief of Police can determine whether the facility meets the requirements of this Ordinance.
- 3.1.4.** A list of the towing equipment available to the operator that will be used for rotational towing.
- 3.1.5.** The location of the release facility to which the public must come to claim towed vehicles.
- 3.1.6.** A copy of the driver's license for each individual who will drive the applicant's vehicles. In the event a new driver is hired subsequent to an applicant's inclusion in the towing rotation list, that driver may not drive on towing rotation list tows until a copy of that license is submitted to the Chief of Police.
- 3.1.7.** Proof of insurance in not less than the following amounts:
 - 3.1.7.1.** Garage keepers insurance insuring against loss to vehicles stored at the yard due to fire, theft, windstorm, vandalism and explosion, in an amount no less than twenty-five thousand dollars (\$25,000.00) with each vehicle suffering loss or damage being deemed a separate loss. This policy shall also insure against loss due to hoisting, lifting or towing of vehicles in the same amount.
 - 3.1.7.2.** Commercial liability insurance insuring the operation of the applicant's business for bodily injury or property damage in the amount of three hundred thousand dollars (\$300,000.00) combined single limit.
 - 3.1.7.3.** Vehicle liability insurance insuring each tow vehicle covering personal injury loss in the amount of three hundred thousand dollars (\$300,000.00), combined single limit, or such greater amount as shall be required by Maine law. Such policy shall also provide for property damage insurance in the amount of twenty-five thousand dollars.

(\$25,000.00).

- 3.1.8.** Each proof of insurance required by section 3.1.7 shall be accompanied by:
 - 3.1.8.1.** An endorsement by the carrier providing thirty (30) days prior written notice to the City of Ellsworth of any changes in coverage or cancellation of the policy.
 - 3.1.8.2.** An endorsement holding the City of Ellsworth, its officers, agents and employees, harmless from all claims whether direct, for contribution, or subrogation.
- 3.1.9.** The lapse or cancellation of any insurance coverage required by section 3.1.7 shall be grounds for immediate suspension from the towing rotation list until proof of adequate coverage is provided to the Chief of Police in the manner specified in Section 3.1.6 and 7, above.
- 3.2.** Upon receipt of a complete application the Chief of Police shall conduct an investigation of the applicant to determine that the applicant, its facilities, employees and agents comply with the terms of this Ordinance. This investigation shall be conducted within thirty days (30) of the receipt of a complete application.
- 3.3.** The Chief of Police shall deny a Certificate of Qualification to any applicant where:
 - 3.3.1.** The applicant fails to file a full and complete application.
 - 3.3.2.** The applicant furnishes false information in its application;
 - 3.3.3.** The applicant lacks the facilities or equipment required by this Ordinance;
 - 3.3.4.** Any person employed as a driver or who otherwise has access to any secure storage area, or who is an owner, officer, partner or principal of the applicant who has been convicted in any state or federal court of a felony or a crime of dishonesty or moral turpitude.
 - 3.3.5.** The applicant, or any person who is an owner, officer, partner or principal of the applicant, is or was an owner, officer, partner or principal of a towing service that is currently suspended or removed from the towing rotation list.

4. Service Standards for Towers Participating in the Towing Rotation List.

- 4.1. Towing services shall maintain and operate a secure storage area and release facility located within the City of Ellsworth or within a radius of five miles (5) of the Ellsworth City Hall.
- 4.2. There shall be no public access to any secure storage area. Any secure storage area shall be separated from any motor vehicle repair area by a wall and locked door or fence and locked gate.
- 4.3. Towing services shall permit the Chief of Police to inspect the premises at random during normal business hours to determine whether the towing service complies with the requirements of this Ordinance. Such inspections shall be only for this purpose and shall not be conducted for any other purpose without proper warrant or lawful reason therefore.
- 4.4. Towing services shall maintain records relating to towing rotation list tows as required by the Chief of Police. These records shall be available for inspection by the Chief of Police during normal business hours.
- 4.5. Towing services shall submit copies of all towing rotation list tow receipts to the Chief of Police within fifteen days (15) of the end of each calendar quarter (March 31, June 30, September 30 and December 31). Any failure to comply with this requirement shall result in the immediate suspension of the towing service from the towing rotation list without prior notice. The suspension shall continue until the first business day following the submission of the required receipts to the Chief of Police.
- 4.6. No vehicle that has been towed in a towing rotation list tow, or any part thereof or item contained therein, shall be removed from the secure storage area or the possession of the towing service until the vehicle is reclaimed by the owner/operator. Any person who seeks to remove any vehicle or part thereof or item therein, prior to reclaiming the vehicle, shall first obtain the written permission of the Chief of Police.
- 4.7. Towing services shall not make any repairs to a towed vehicle without the written consent of the owner.
- 4.8. Towing services shall maintain a 24-hour business telephone.

5. Towing Vehicle Standards.

- 5.1. All towing services shall have a two-way radio or cellular telephone in each wrecker.

- 5.2. All wreckers shall be properly registered and inspected, and shall at all times meet Maine State inspection standards.
- 5.3. All wreckers shall be equipped with fire extinguishers, emergency lights and equipment for the removal of debris from an accident scene.
- 5.4. All wreckers shall have the towing service name and telephone number stenciled on each door in letters at least three inches in height.
- 5.5. Towing services shall permit the Chief of Police to inspect any wreckers at random during normal business hours or at any time the wrecker is operating to determine whether the towing service complies with the requirements of this Ordinance. Such inspections shall be only for this purpose and shall not be conducted for any other purpose without proper warrant or lawful reason therefore.
- 5.6. All wreckers shall be equipped with some means of removing a vehicle without wheels.

6. Tow Scene Activities.

- 6.1. Towing services participating in the towing rotation list are expected to accept all kinds of work. Three refusals to provide towing services within any ninety day (90) calendar period without good cause therefore shall constitute a violation of this Ordinance.
- 6.2. Wreckers called on a towing rotation list tow shall respond on the scene within thirty minutes (30) of receipt of a request from the police department for service. Any tower that is not able to respond within this period shall notify the police dispatch within fifteen minutes (15) of the request from the police department.
- 6.3. Vehicles must be towed, not driven, to the storage lot or other destination. Upon the request of the owner/operator of the vehicle and the approval of the police department, the towing service shall tow the vehicle to the owner's preferred location.
- 6.4. Towing services shall, at the time of payment, give a towing rotation list tow receipt to the owner/operator or each vehicle towed in a towing rotation list tow. The receipt shall be printed with the towing service's name, address and telephone number, and shall itemize the cost of towing, mileage fees, storage fees and any other additional fees or costs. A copy of each receipt shall be provided to the Chief of Police as required by section 4.5, above.
- 6.5. The wrecker operator or other employee of the towing service shall clean the scene of all non-hazardous vehicular debris resulting from the accident. All

debris shall be removed to the satisfaction of the police officer in charge of the scene prior to the wrecker leaving the scene.

- 6.6. No towing service owner, officer, employee or agent shall, while engaged in any towing activity, engage in any loud argument, fight or other disturbance; harass, threaten or assault another person; intentionally, knowingly or recklessly damage, destroy or threaten to damage or destroy the property of another; or in any other manner engage in conduct detrimental to the orderly and efficient towing of vehicles.
- 6.7. The solicitation of towing business at the scene of any accident or emergency is prohibited unless the police or the owner/operator of the vehicle to be towed called or summoned the towing service to the scene. This prohibition applies regardless of whether the police department has arrived or been called. This section is not meant to prohibit tow services from stopping to render assistance in their normal course of travel when coming upon a disabled motorist.

7. Release of Vehicles.

- 7.1. Any vehicle impounded by the police department shall not be released to the owner/operator without the prior approval of the Chief of Police. Such vehicles shall be labeled "Police Hold" on the tow receipt.

All other vehicles may be released to the owner/operator or his agent provided that proof of ownership is shown and the appropriate fees due the towing service have been paid. Towing services shall release a vehicle within two hours (2) of the satisfaction of these conditions and the owner/operator's request.

- 7.2. The towing service shall advise vehicle owner/operators prior to the release of a vehicle, if there is an additional charge for releases after 6:00 pm, that a daily storage fee will be charged for vehicles left for more than twelve hours (12), and if cash is the only accepted means of payment.
- 7.3. The police department shall be notified of any vehicles that remain unclaimed for a period of more than thirty days (30) by forwarding a copy of the towing receipt to the Chief of Police. The towing service shall handle unclaimed vehicles only in accordance with state statute.

8. Administrative Provisions.

- 8.1. The service rates and fee charges are established in the attached Appendix "A". Any dispute about charges shall be submitted to the City Manager for resolution. The decision of the City Manager is final. The owner/operator of a towed vehicle shall not be obligated to pay any charge unless they have been given a copy of the towing rotation list tow receipt as required by Section 6.4, above.

8.2. Service charges:

- 8.2.1.** Upon recommendation of the Chief of Police, the City Council shall review and approve all fees pertaining to the towing ordinance. See Appendix “A”

8.3. The following shall be grounds for suspension or removal from the towing rotation list:

- 8.3.1.** The occurrence of any condition that would require the Chief of Police to deny an application for a Certificate of Qualification pursuant to Section 3.3;
- 8.3.2.** Violation of any provision of this Ordinance during any towing rotation list tow;
- 8.3.3.** Violation of Sections 6.6 or 6.7 at any time;
- 8.3.4.** A failure to comply with any provision of this Ordinance that expressly contains a penalty of suspension for non-compliance.

8.4. Suspension and removal shall be imposed in accordance with the following provisions:

- 8.4.1.** Any suspension imposed pursuant to Section 8.3.1 shall continue until the towing services re-applies for and receives a new Certificate of Qualification.
- 8.4.2.** Any suspension imposed pursuant to Section 8.3.4 shall continue as set forth in the provision imposing a suspension.
- 8.4.3.** Any suspension imposed pursuant to Section 8.3.3 shall be for:
 - 8.4.3.1.** Thirty days (30) for a first violation within any 18-month period.
 - 8.4.3.2.** Sixty days (60) for a second violation within any 18-month period.
 - 8.4.3.3.** One hundred and twenty days (120) for a third violation within any 18-month period.
 - 8.4.3.4.** Removal for at least one year for a fourth violation occurring within any 18-month period, or for a sixth violation occurring in any three-year period.

8.5. The City Manager shall serve as the hearing officer for the purposes of Section 8.3.

8.6. Any towing service participating in the towing rotation list may appeal a suspension or removal from the towing rotation list to the Ellsworth Board of Appeals within fifteen days of the suspension. There shall be a fee of one hundred dollars for this appeal.

8.7. Any suspension or removal imposed pursuant to Sections 8.3.2 or 8.3.3 shall be stayed during the pendency of the appeal. Any suspension imposed pursuant to Sections 8.3.1 or 8.3.4 shall not be stayed.

9. Severability.

In the event any provision or portion of this Ordinance is held to be unlawful or unconstitutional by any court of competent jurisdiction, the remaining provisions or portions of the Ordinance re declared to be severable and shall not be thereby invalidated.

10. Definitions

Accident: Any situation wherein a vehicle is damaged or disabled, regardless of amount, such that towing services are desirable or required.

Emergency: Any situation wherein a police officer or any other law enforcement officer or emergency official determines that public safety or welfare requires the towing of a vehicle. An emergency includes an arrest scene where the police determine that a vehicle must be towed.

Chief of Police: The Chief of the Ellsworth Police Department or his designee.

Police Department or Officer: The Ellsworth Police Department and its officers.

Non-preference tows. Tows where the owner/operator of the vehicle expresses no preference for the services of a particular towing company that is reasonably available, or the owner/operator is unable or unwilling to express such a preference.

Secure storage area: An internal secure storage area contained within a fully enclosed building. An external secure storage area that is fully fenced and gated.

Service call: A call for services that do not involve towing, such as gas, locked vehicle or flat tire calls.

Towing rotation list tow receipts: Receipts for tows required by Sections 4.5 and 6.4 of this Ordinance.

APPENDIX “A”
Towing Fees

Light duty tows (GVW less than 12,000 lbs) ¹	Standard	Accident
Day rate (8:00 am to 6:00 pm)	\$60	\$125
Night rate (6:00 pm to 8:00 am)	\$70	\$125
Outside storage ²	\$40	
Inside storage ²	\$60	
Mileage	\$3.00 per loaded mile	\$3.00 per loaded mile
Time > ½ hour in fifteen minute increments ³	\$80 \$20/ 15 min.	\$120/hr roll over \$30/ 15 min
Day service call	\$40	
Night service call	\$60	
<p>¹A dual rear wheel vehicle built on a full-sized chassis is not considered a "light duty tow" regardless of GVW.</p> <p>²Note: The first day of storage may be charged if the vehicle is held in excess of 12 hours. Subsequent storage may be charged after the initial 24-hour period for any part of each subsequent 24-hour period.</p> <p>³Time charges may be assessed for time at the scene, only. Time will not be assessed for time spent going to or returning from a tow, nor shall time be assessed in addition to mileage.</p>		

Approved at the December 19, 2012 Council Meeting.

A True Copy

Attest: _____

Heidi-Noël Grindle

APPENDIX “A”
Towing Fees

Light duty tows (GVW less than 12,000 lbs) ¹	Standard	Accident
Day rate (8:00 am to 6:00 pm)	\$60	\$125
Night rate (6:00 pm to 8:00 am)	\$70	\$125
Outside storage ²	\$40	
Inside storage ²	\$60	
Mileage	\$3.00 per loaded mile	\$3.00 per loaded mile
Time > ½ hour in fifteen minute increments ³	\$80 \$20/ 15 min.	\$120/hr roll over \$30/ 15 min
Day service call	\$40	
Night service call	\$60	
<p>¹A dual rear wheel vehicle built on a full-sized chassis is not considered a "light duty tow" regardless of GVW.</p> <p>²Note: The first day of storage may be charged if the vehicle is held in excess of 12 hours. Subsequent storage may be charged after the initial 24-hour period for any part of each subsequent 24-hour period.</p> <p>³Time charges may be assessed for time at the scene, only. Time will not be assessed for time spent going to or returning from a tow, nor shall time be assessed in addition to mileage.</p>		

Approved at the December 19, 2012 Council Meeting.

A True Copy

Attest: _____

Heidi-Noël Grindle

Chapter 49

DRAFT PROPOSED ORDINANCE
CITY OF Ellsworth, MAINE

~~June 9, 1997~~

Adopted 7/21/97

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DRAFT PROPOSED ORDINANCE
CITY OF _____, MAINE

June 9, 1997

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____,
MAINE, REPEALING IN ITS ENTIRETY THE CITY OF _____ CABLE
TELEVISION ORDINANCE ADOPTED ON _____, AND ADOPTING THE
_____ CABLE COMMUNICATIONS REGULATORY CODE, WHICH
REVISES THE PROCEDURES AND REQUIREMENTS RELATING TO CABLE
TELEVISION FRANCHISES TO REFLECT CHANGES IN APPLICABLE LAW AND TO
BETTER ENSURE THAT USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS
SERVES THE PUBLIC INTEREST.

Be it ordained by the City Council of the City of

_____ as follows:

1.0 GENERAL PROVISIONS

1.1 Title. This Ordinance shall be known and may be cited
as the "_____ Cable Communications Regulatory Ordinance."

1.2 Purpose: The City of _____ finds that the
development of cable television systems has the potential of
greatly benefitting and having a positive impact on the people
of _____. Cable technology is rapidly changing, and cable
is expected to play an essential role as part of the City's basic
infrastructure. Cable television systems extensively make use of
scarce and valuable Public Rights-of-Way, in a manner different
from the way in which the general public uses them, and in a
manner reserved primarily for those that provide services to the
public, such as utility companies. The City finds that public
convenience, safety, and general welfare can best be served by

establishing regulatory powers vested in the City or such Persons as the City so designates to protect the public and to ensure that any Franchise granted is operated in the public interest. In light of the foregoing, the following goals and the State policies set forth at 30-A M.R.S.A. § 3008(1), among others, underlie the provisions set forth in this Ordinance:

a. Cable should be available to as many City residents as possible.

b. A Cable System should be capable of accommodating both the present and reasonably foreseeable future cable-related needs of the community, to the extent economically feasible.

c. A Cable System should be constructed and maintained during a Franchise term so that changes in technology may be integrated to the maximum extent that is economically feasible into existing system facilities.

d. A Cable System should be responsive to the needs and interests of the local community.

The City intends that all provisions set forth in this Ordinance be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this Ordinance be construed to include the foregoing findings and public purposes as integral parts thereof.

2.0 DEFINITIONS AND WORD USAGE.

For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given

herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. §§ 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

2.1 Affiliate. Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Grantee.

2.2 Basic Cable Service. Any Service Tier that includes the retransmission of local television broadcast signals.

2.3 Cable Act. The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Competition and Consumer Protection Act of 1992, the Telecommunications Act of 1996, and as it may be further amended from time to time.

2.4 Cable Programming Service. Any video programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the Basic Cable Service tier; and (B)

video programming offered on a per-channel, or per-program basis.

2.5 Cable Service. This term shall have the meaning given it by the Cable Act, as amended.

2.6 Cable System or System. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any Public Right-of-Way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with federal law; or (v) any facilities of any electric utility used solely for operating its electric utility systems. A reference to a Cable System refers to any part thereof, including, without limitation, facilities located in the interior of a Subscriber's residence or other premises.

2.7 City. The City of _____, Maine, and any agency, department, or agent thereof.

2.8 FCC. The Federal Communications Commission, its designee, or any successor governmental entity thereto.

2.9 Franchise. The non-exclusive authorization granted in accordance with this Ordinance to construct, operate, and maintain a Cable System along the Public Rights-of-Way within the City. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the City as required by the ordinances and laws of the City, or for attaching devices to poles or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along Public Rights-of-Way.

2.10 Franchise Agreement. A contract entered into in accordance with the provisions of this Ordinance between the City and a Grantee that sets forth, subject to applicable state and federal law, the terms and conditions under which a Franchise will be exercised.

2.11 Franchise Area. The term "franchise area" for any franchise granted under this ordinance shall mean the whole of the City of _____. All new or renewal franchise agreements granted under this ordinance shall require the grantee, within a reasonable period after the effective date of the franchise agreement, to extend service to all areas of the City that meet density requirements to be set out in the franchise agreement. No franchise or renewal franchise approved under this ordinance shall contain density requirements that are less restrictive than the density requirements of franchise agreements with other grantees that are then in force.

2.12 Grantee. The natural Person(s), partnership(s), domestic or foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has or have been granted a cable television Franchise by the City.

2.13 Gross Revenues. Those items within the scope of the term "gross revenues" as used in the Cable Act, as amended, including any and all cash, credits, or other consideration of any kind or nature received directly or indirectly by a Grantee, an Affiliate of a Grantee, or any Person in which a Grantee has a five percent (5%) or greater financial interest, or by any other entity that is a cable operator of a Cable System arising from, attributable to, or in any way derived from the operation of a Grantee's Cable System to provide Cable Service, including the facilities associated therewith. Gross Revenues include, but are not limited to, monthly fees charged Subscribers for any basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees; payments, or other consideration received from programmers for carriage of programming on the System; revenues from converter rentals or Sales; advertising revenues; barter; revenues from program guides; and revenues from home shopping channels. "Gross Revenues" do not include reimbursed expenses unless the expense is separately claimed. Gross Revenues earned on a System-wide basis shall be allocated to the City on the basis of the ratio of the subscribers in the City to the total subscribers in all the franchising authorities served by the System. Gross Revenues shall be the basis for computing the Franchise Fee under this Ordinance. Gross Revenues shall not include (i) to the extent consistent with generally

accepted accounting principles, actual bad debt write-offs, provided, however that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the value of free cable services provided to Grantee's employees or to the City; (iii) revenues received by an Affiliate from the Grantee on which the Grantee has already paid the Franchise fee; (iv) any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or user by the state, City, or other governmental unit and which are collected by a Grantee on behalf of said governmental unit; and (v) revenues from the provision of telecommunications services.

2.14 Person. An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the City.

2.15 Public Right-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City now or hereafter holds any property interest, or may lawfully grant the use of, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein, or in any Franchise Agreement, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City

that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Grantee shall be deemed to gain only those rights to use as are properly in the City and as the City may have the undisputed right and power to give.

2.16 Sale. Any sale, exchange, or barter transaction.

2.17 Service Tier. A package of two or more Cable Services for which a separate charge is made by the Grantee, other than a package of premium and pay-per-view services that may also be sold on a true a la carte basis.

2.18 Subscriber. Any Person who legally receives Cable Service, whether or not a fee is paid for such service.

2.19 Transfer. Any transaction in which (i) an ownership or other interest in a Grantee, its Cable System, or any Person that is a cable operator of the Cable System is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Grantee is transferred; or (ii) the rights or obligations held by a Grantee under a Franchise Agreement are transferred or assigned to another Person or group of Persons. Control for these purposes means working control, in whatever manner exercised. By way of illustration and not limitation, the addition, deletion, or other change of any general partner of a Grantee, any person who owns or controls a Grantee, or a cable operator of a Cable System is such a change of control.

2.20 User. A Person or organization utilizing a channel or equipment and facilities for purposes of producing or

transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

3.0 GRANT OF FRANCHISE

3.1 Grant of Franchise. The City may grant one or more cable television Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Ordinance. In no event shall this Ordinance be considered a contract between the City and a Grantee.

3.2 Franchise Required. No Person may construct or operate a Cable System without a Franchise granted by the City unless otherwise authorized by law, and no Person may be granted a Franchise without having entered into a Franchise Agreement with the City pursuant to this Ordinance.

3.3 Franchise Characteristics.

3.3.1 Authority Granted by Franchise. A Franchise authorizes use of Public Rights-of-Way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System within a Franchise Area, but does not expressly or implicitly authorize a Grantee to provide service to, or install a Cable System on private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

3.3.2 Term of Franchise. The term of a Franchise may not exceed fifteen (15) years.

3.3.3 Non-exclusivity. A Franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the City; affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as it determines appropriate; or affect the City's right to itself construct, operate, or maintain a Cable System, with or without a Franchise.

3.3.4 Franchise Agreement Constitutes Contract. Once a Franchise Agreement has been accepted and executed by the City and a Grantee, such Franchise Agreement shall constitute a contract between the Grantee and the City, and the terms, conditions, and provisions of such Franchise Agreement, subject to the Ordinance in effect as of the effective date of such Franchise Agreement and all other duly enacted and applicable laws, shall define the rights and obligations of the Grantee and the City relating to the Franchise. Nothing in this Ordinance or a Franchise Agreement shall be deemed a waiver of or restriction on the City's police powers, or a waiver of any of the terms of any City ordinance regarding the use or management of the Public Rights-of-Way or intended to protect the public's safety.

3.3.5 Use of Public Rights-of-Way. All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Public Rights-of-Way, and the City

reserves the right to reasonably designate where a Grantee's facilities are to be placed within the Public Rights-of-Way. The rights and privileges granted pursuant to a Franchise shall not be in preference or hindrance to the right of the City, or other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvement, and should a Cable System in any way interfere with the construction, maintenance, or repair of such public works or improvements, the Grantee shall promptly, at its own expense, protect or relocate its System or part thereof, as directed by the City or other authority having jurisdiction.

3.3.6 Franchise Personal to Grantee. A Franchise shall be a privilege that is in the public trust and personal to the original Grantee. No Transfer of a Franchise shall occur without the prior consent of the City and unless application is made by the Grantee and City approval obtained, pursuant to this Ordinance and the Franchise Agreement; which approval shall not be unreasonably withheld, provided, however, that the Grantee may make assignments of collateral to a lender upon reasonable prior notice to the City. No such assignment of collateral shall be deemed to permit any person to avoid any obligations under this Ordinance or a Franchise Agreement.

3.3.7 Exclusive Contracts Unenforceable. A Franchise holder may not enter into or enforce any exclusive contract with a Subscriber as a condition of providing or continuing service.

3.4 Grantee Subject to Other Laws, Police Power.

3.4.1 Compliance With Laws. A Grantee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A Grantee shall at all times be subject to all lawful exercise of the police power of the City, including all rights the City may have under 47 U.S.C. § 552.

3.4.2 No Waiver of City Rights. No course of dealing between a Grantee and the City, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of a Grantee in contravention of rights except to the extent expressly waived by the City or expressly provided for in a Franchise Agreement, or other applicable laws, rules or regulations.

3.4.3 City Has Maximum Regulatory Authority. The City shall have the maximum plenary authority to regulate Cable Systems, Grantees, and Franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a Franchise Agreement, they are reserved, whether expressly enumerated or not.

3.5 Interpretation of Franchise Terms.

3.5.1 Provision to City's Benefit Controlling. In the event of a conflict between this Ordinance as effective on the effective date of a Franchise Agreement and that Franchise Agreement, the terms of this Ordinance as effective on the effective date of that Franchise Agreement shall control, except as otherwise provided in a Franchise Agreement.

3.5.2 Liberal Construction. To the extent permitted by law, the provisions of this Ordinance and a Franchise Agreement will be liberally construed in favor of the City in order to effectuate their purposes and objectives and to promote the public interest, except as otherwise provided in a Franchise Agreement.

3.5.3 Governing Law. Except as to matters that are governed solely by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the State of Maine.

3.6 Operation of a Cable System Without a Franchise. Any Person who occupies Public Rights-of-Way for the purpose of operating or constructing a Cable System and who does not hold a valid Franchise from the City shall be subject to all provisions of this Ordinance, including but not limited to its provisions regarding construction and technical standards and Franchise fees. In its discretion, the City at any time may require such Person to enter into a Franchise Agreement within thirty (30) days of receipt of a written notice by the City that a Franchise Agreement is required; require such Person to remove its property

and restore the area to a condition satisfactory to the City within such time period; remove the property itself and restore the area to a satisfactory condition and charge the Person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a Franchise be created unless it is issued by action of the City and subject to a Franchise Agreement.

3.7 Right of Condemnation Reserved. Nothing in this Ordinance or any Franchise Agreement shall limit any right the City may have to acquire by eminent domain or otherwise any property of Grantee.

3.8 Acts at Grantee's Expense. Any act that a Grantee is or may be required to perform under this Ordinance, a Franchise Agreement, or applicable law shall be performed at the Grantee's expense, unless expressly provided to the contrary in this Ordinance, the Franchise Agreement, or applicable law.

4.0 APPLICATIONS FOR GRANT, RENEWAL, OR MODIFICATION OF FRANCHISES

4.1 Written Application.

4.1.1 Application Requirement. A written application shall be filed with the City for (i) grant of an initial Franchise; (ii) renewal of a Franchise under 47 U.S.C. § 546(a)-(g); or (iii) modification of a Franchise Agreement pursuant to this Ordinance or a Franchise Agreement. An applicant shall

demonstrate in its application compliance with all requirements of this Ordinance, any existing Franchise Agreement held by the applicant and all applicable laws.

4.1.2 Acceptability for Filing. To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The City Manager may, in combination with neighboring communities, establish a joint application procedure, provided that any such procedure conforms with the standards of this ordinance. The application must be accompanied by the required application filing fee as set forth in Article 4.6, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.

4.1.3 Applications Available for Public Inspection. All applications accepted for filing shall be made available by the City for public inspection in the office of the City Clerk during normal business hours.

4.1.4 City May Waive. The City Council may waive any of the provisions of this Section 4.0 by resolution, where application of the rule would cause manifest injustice, except for those provisions required by state or federal law. Any waiver granted shall explain the basis for the waiver and shall not unduly discriminate against any applicant.

4.2 Application for Grant of a Franchise, Other Than a Cable Act Renewal Franchise.

4.2.1 Application. A Person may apply for an initial Franchise by submitting an application containing the information required in Article 4.4 and requesting an evaluation of that application pursuant to Article 4.2.2. Prior to evaluating that application, the City shall conduct such reasonable investigations as are necessary to determine whether the application satisfies the standards set forth in Article 4.2.2 and may seek additional applications.

4.2.2 Factors in Evaluating Application for Franchise or Renewal of Existing Franchise. In evaluating an application for a Franchise, the City shall consider, among other things, the following factors:

a. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable Franchise for the City.

b. Whether the quality of the applicant's service under an existing Franchise in the City, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served.

c. Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service.

d. Whether the application satisfies any minimum requirements established by the City and is otherwise reasonable to meet the future cable-related needs and interests of the

community, taking into account the cost of meeting such needs and interests.

e. Whether, to the extent not considered as part of Article 4.2.2.e, the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support, consistent with community needs and interests.

f. Whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of the applicant and its proposed facilities to meet the cable-related needs and interests of the community.

g. Whether the applicant or an Affiliate of the applicant owns or controls any other Cable System in the City, or whether grant of the application may eliminate or reduce competition in the delivery of Cable Service in the City.

4.2.3 City Determination. If the City finds that it is in the public interest to issue a Franchise after considering the factors set forth above, and subject to the applicant's entry into an appropriate Franchise Agreement, it shall issue a Franchise. If the City denies a Franchise, it will issue within 30 days a written decision explaining why the Franchise was denied. Prior

to deciding whether or not to issue a Franchise, the City may hold one or more public hearings or implement other procedures under which comments from the public on an applicant may be received. The City also may grant or deny a request for a Franchise based on its review of an application without further proceedings and may reject any application that is incomplete. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing Grantee standing to challenge the issuance of a Franchise to another, except as provided by applicable State or Federal laws or regulations.

4.2.4 Joint Review. The City may elect to delegate review of an application to a consortium of local governments or a formally constituted interlocal body of which the City is a member. Any such entity shall review the application in accordance with the standards of Section 4.2.2 and make a recommendation to the City. In such a case, the City Council shall review the recommendation of the designated body and approve or reject it in accordance with the terms of Section 4.2.3.

4.3 Application for Grant of a Cable Act Renewal Franchise. Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546. If neither a Grantee nor the City activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of

Article 4.2 shall apply and a renewal request shall be treated the same as any other request for a Franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

4.3.1 Issuance of RFP. If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the City may issue an RFP after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The City Administrator, or the Administrator's designee, shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to that RFP (and such additional information as may be provided in response to requests), the City will determine that the Franchise should be renewed, or make a preliminary assessment that the Franchise should not be renewed. That determination shall be in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by Order. If the City determines that the Franchise should not be renewed, and the applicant that submitted the renewal application notifies the City, either in its RFP response or within ten (10) working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the City shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with

the Cable Act. If the City decides preliminarily to grant renewal, it shall prepare a final Franchise Agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the Franchise Agreement, and the final agreement is ratified by the City, the Franchise shall be renewed. If the Franchise Agreement is not so accepted and ratified within the time limits established by 47 U.S.C. § 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced if the applicant that submitted the renewal application requests it within ten (10) days of the expiration of the time limit established by 47 U.S.C. § 546(c)(1).

4.3.2 Administrative Hearing. If an administrative hearing is commenced pursuant to 47 U.S.C. § 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

a. The City Council shall, by order, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The City Council may appoint itself as hearing officer.

b. The hearing officer shall establish a schedule for proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary

discovery and interrogatory responses will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by such applicant directly or indirectly. The hearing officer may issue protective orders to the extent permitted under applicable State law. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

c. The hearing officer may conduct a prehearing conference and establish appropriate prehearing procedures. Intervention by non-parties is not authorized except to the extent permitted by the Cable Act.

d. The hearing officer may require the City and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, and the City shall present evidence second.

e. Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. § 546(a) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The City and the applicant

must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in those proceedings or sought to be introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. § 546(a).

f. Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the City is entitled to consider in determining whether renewal should be granted. Based on the record of the hearing, the hearing officer shall then prepare written findings with respect to those matters, and submit those findings to the City Council and to the parties (unless the hearing officer is the City Council, in which case the written findings shall constitute the final decision of the City), if permitted by applicable laws or rules.

g. If the hearing officer is not the City Council, the parties shall have thirty (30) days from the date the findings are submitted to the City Council to file exceptions to those findings. The City Council shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of such proceeding. A copy of that decision of the City Council shall be provided to the applicant.

h. The proceeding shall be conducted with due speed.

i. In conducting the proceedings, and except as inconsistent with the foregoing, the hearing officer will follow the Maine Administrative Procedures Act or the successor statutes thereto unless otherwise governed by Federal law or regulations. The hearing officer may request that the City Council adopt additional procedures and requirements as necessary in the interest of justice.

4.3.3 Informal Renewal Applications. This Article does not prohibit any Grantee from submitting an informal renewal application pursuant to 47 U.S.C. § 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. § 546(h).

4.3.4 Consistency With Cable Act. The provisions of this Ordinance shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. § 546.

4.4 Contents of Applications. If issued by the City, an RFP for the grant of a renewal Franchise under 47 U.S.C. § 546(c) shall require, and any application for an initial or renewal franchise (other than an application submitted pursuant to 47 U.S.C. § 546(h)) shall contain, at a minimum, the following information:

4.4.1 Identification of Applicant and Its Ownership and Control. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and controlling Affiliates of the applicant, and all Persons with five (5) percent or more ownership interest in the applicant and its Affiliates; the

Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

4.4.2 Statement of Applicant's Technical Ability. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

4.4.3 Statement of Applicant's Legal Qualifications. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

a. The applicant must not have submitted an application for an initial or renewal Franchise to the City, which was denied on the ground that the applicant failed to propose a System meeting the cable-related needs and interests of the community, or as to which any challenges to such licensing decision were finally resolved adversely to the applicant, within one (1) year preceding the submission of the application.

b. The applicant must not have had any cable television Franchise validly revoked by any licensing authority within three (3) years preceding the submission of the application.

c. The applicant must have the necessary authority under Maine law to operate a Cable System within Maine.

d. The applicant shall not be issued a Franchise if it may not hold the Franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain any necessary federal approvals or waivers required to operate the System proposed.

e. The applicant shall not be issued a Franchise if, at any time during the ten (10) years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the City and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

f. The applicant shall not be issued a Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

g. The applicant shall not be issued a Franchise if an elected official of the City holds a controlling interest in the applicant or an Affiliate of the applicant.

Notwithstanding the foregoing, the City shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a Franchise under Article 4.4.3.b or e, by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing

therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable television Systems.

4.4.4 Statement of Applicant's Financial Qualifications. A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposed.

4.4.5 Description of Prior Experience. A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable Franchise or license or any interest therein, provided that, an applicant that holds a Franchise for the City and is seeking renewal of that Franchise need only provide this information for other communities where its Franchise was scheduled to expire in the two (2) calendar years prior to and after its application was submitted.

4.4.6 Identification of Area To Be Served. Identification of the area of the City to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries. All Grantees shall be bound and required to serve the same areas within the City.

4.4.7 Description of Physical Facilities. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

4.4.8 Description of Construction of Proposed System.

Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

4.4.9 Proposed Rate Structure. The proposed rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services.

4.4.10 Demonstration of How Future Community Needs and Interests Will Be Met. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the City, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests. The City Manager may, in coordination with neighboring communities, establish procedures for conducting a joint needs assessment.

4.4.11 Pro Forma Financial Projections. Pro forma financial projections for the proposed Franchise term, including a statement of projected income, and a schedule of planned

capital additions, with all significant assumptions explained in notes or supporting schedules.

4.4.12 Identification of Area of Overbuild. If the applicant proposes to provide Cable Service to an area already served by an existing cable Grantee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area that would encompass the overbuild, the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System, and assurances that any existing facilities will not be disturbed by the proposed overbuild, except as necessary for make ready work.

4.4.13 Other Information. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

4.4.14 Information Requested by City. Information that the City may reasonably request of the applicant that is relevant to the City's consideration of the application.

4.4.15 Certification of Accuracy. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements, in a format approved by the City.

4.5 Application for Modification of a Franchise. An application for modification of a Franchise Agreement shall include, at a minimum, the following information:

- a. The specific modification requested;

b. The justification for the requested modification, including the impact of the requested modification on Subscribers, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

c. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

d. Any other information that the applicant believes is necessary for the City to make an informed determination on the application for modification; and

e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

4.6 Filing Fees. To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

- | | | |
|----|--|--------|
| a. | For an initial Franchise: | \$ 500 |
| b. | For renewal of a Franchise: | \$ 500 |
| c. | For modification of a Franchise Agreement: | \$500 |

The City may also elect to share the costs of reviewing an application with other communities served by the system of which an existing or proposed cable system in the City is a part. In that case, the filing fees shown above shall not apply, and shall be replaced with combined filing fees for all communities with whom the City is sharing expenses. The combined filing fees shall be \$7,000 for an initial grant or a modification, and \$7,000 for a renewal.

Combined filing fees shall be prorated among the participating communities on the basis of the number of residents in each community as of the most recent U.S. Census, or allocated according to some other mutually agreeable method.

Application fees for franchise renewals may be increased as necessary to recover the City's additional cost of conducting any hearings required under 47 U.S.C. § 546(a) through (g), if the Grantee has invoked that procedure in its renewal application.

4.7 Public Hearings. An applicant shall be notified in writing at least 10 calendar days in advance of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a Franchise, the City shall provide for the holding of a public hearing within the proposed Franchise Area, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to

be published in a newspaper of general circulation in the proposed Franchise Area once a week for two consecutive weeks. The first publication shall be not less than fourteen (14) days before the day of the hearing. Nothing herein shall be deemed to

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prevent or limit communities in which the applicant has requested grant or renewal of a franchise from holding joint public hearings in a location reasonably accessible to residents of each community which is the subject thereof.

5.0 INSURANCE AND INDEMNITY

5.1 Insurance Required. A Grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, such insurance as will protect the City and elected officials, employees and agents from any claims that may arise directly or indirectly or result from its acceptance of the Franchise or its activities under the Franchise, whether such activities are performed by the Grantee, or by anyone for whose acts the Grantee may be liable, including, but not limited to, the following:

a. Worker's compensation, including disability benefits and any other legally required employee benefits, meeting all statutory amounts;

b. Property insurance, all risk, replacement cost basis, on all of the Grantee's assets;

c. General liability insurance, in the following minimum amounts:

Bodily injury or death	
Primary insurance	\$1,000,000 per person
	\$1,000,000 per occurrence
Umbrella insurance	\$5,000,000
Property damage	\$1,000,000

The City may review these amounts no more than once a year and may require reasonable adjustments to them consistent with the public interest. The Franchise Agreement may specify the procedures to be followed in the event that the Grantee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount.

5.2 Qualifications of Sureties. All insurance policies shall be with sureties qualified to do business in the State of Maine, with an A or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form acceptable to the City.

5.3 Evidence of Insurance. A Grantee shall keep on file with the City current certificates of insurance. A Grantee shall provide the City with copies of all insurance policies in effect during the franchise period upon the written request of the City.

5.4 Additional Insureds; Prior Notice of Policy Cancellation. All general liability insurance policies shall name the City, elected officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City. A Grantee shall not cancel any required insurance policy without submission of proof that the Grantee has obtained alternative insurance satisfactory to the City which complies with this Ordinance.

5.5 Indemnification.

5.5.1 Indemnification for Damages and Equitable

Relief. A Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its inhabitants, elected officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Grantee to secure consents from the owners, authorized distributors, or Grantees of programs to be delivered by the Cable System; the conduct of the Grantee's business in the City; or in any way arising out of the Grantee's enjoyment or exercise of a Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Ordinance or a Franchise Agreement.

5.5.2 Indemnification for Cable Act Claims. A Grantee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and in its capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Grantee for invasion of the right of privacy, defamation of any

Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless the Grantee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning indecent or obscene programming,

5.5.3 Attorneys' Fees. The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, action or proceeding.

5.6 No Limit of Liability. Neither the provisions of this Article nor any damages recovered by the City shall be construed to limit the liability of a Grantee for damages under any Franchise issued hereunder.

5.7 No Recourse. Without limiting such immunities as it may have under applicable law, the City shall not be liable to the Grantee for any damages or loss that the Grantee may suffer as the result of the City's exercise of its ^{lawful} authority pursuant to this Ordinance, a Franchise Agreement, or other applicable law.

6.0 PERFORMANCE BOND

6.1 Requirement of Bond. Prior to any construction, rebuild or upgrade of the Cable System requiring work in the

Public Rights-of-Way other than installation of aerial facilities and utility poles, a Grantee shall establish in the City's favor an irrevocable performance bond in an amount specified in the Franchise Agreement or otherwise determined as reasonable by municipal officers as necessary to ensure the Grantee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall not exceed the lesser of ten (10) percent of the total cost of the work being done in the Public Right-of-Way other than installation of aerial facilities and utility poles, or Fifty Thousand Dollars (\$50,000).

6.2 Recovery Under Performance Bond. In the event that a Grantee subject to such a performance bond fails to complete the Cable System construction, upgrade, or other work in the Public Rights-of-Way in a safe, timely (subject to the force majeure provision of Section 17.2), and competent manner in accordance with the provisions of a Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund

required under Article 7.0 of this Ordinance, where such amount exceeds that available under the security fund.

6.3 Elimination or Reduction of Bond. Any performance bond shall remain in place for one full year after completion to the satisfaction of the City of the work in the Public Right-of-Way.

6.4 New Bond for New Project. The City may subsequently require a new bond, for any subsequent construction, or other work in the Public Rights-of-Way other than installation of aerial facilities and utility poles, whose cost exceeds an amount specified in a Franchise Agreement. In the event a Grantee fails to complete the work secured by such a new performance bond in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund required under Article 7.0 of this Ordinance, where such amount exceeds that available under the security fund. In any event, the total amount of the bond shall not exceed the lesser ten (10) percent of the cost of the work being done in the Public Right-of-Way, or Fifty Thousand Dollars (\$50,000).

6.5 Issuance of Bond; Notice of Cancellation Required. Any performance bond shall be issued by a surety qualified to do business in the State of Maine, and having an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City; and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after notice to the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

6.6 Forfeiture. The total amount of any outstanding bond shall be forfeited in favor of the City in the event that:

- a. The Grantee abandons the Cable System or any part thereof at any time during the term of the Franchise; or
- b. The Grantee fails to purchase and maintain insurance as required by Article 5.0 hereof; or
- c. The Franchise is revoked as provided in Article 8.2 hereof.

7.0 SECURITY FUND

7.1 Establishment of Security Fund.

(a) A Franchise Agreement may provide that, prior to the Franchise's becoming effective, the Grantee shall post with the City a cash security deposit to be used as a security fund to ensure the Grantee's faithful performance of and compliance with all provisions of this Ordinance, the Franchise Agreement, and other applicable laws, and compliance with all orders, permits,

and directions of the City or any agency thereof having jurisdiction over the Grantee's acts or defaults under the Franchise, and the payment by the Grantee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The amount of any security fund shall be specified in a Franchise Agreement.

(b) In lieu of a cash security fund, a Grantee may agree to file and maintain with the City an irrevocable letter of credit with a bank having an office in the State of Maine in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. Said letter of credit shall remain in effect for the full term of the Franchise plus an additional six (6) months thereafter. The Grantee and its surety shall be jointly and severally liable under the terms of the letter of credit for the Grantee's failure to ensure its faithful performance of and compliance with all provisions of this Ordinance, the Franchise Agreement, and other applicable law, and compliance with all orders, permits, and directions of the City, and the payment by the Grantee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The letter of credit shall provide for thirty (30) days' prior written notice to the City of any intention on the part of the Grantee to cancel, fail to renew, or otherwise materially alter its terms. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City

thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

7.2 Use of Fund. If a Grantee fails to make timely payment to the City of any amount due as a result of Franchise requirements, fails to make timely payment to the City of any amounts due under a Franchise Agreement or applicable law, fails to make timely payment to the City of any taxes lawfully due, or fails to compensate the City for any damages, costs, or expenses the City suffers or incurs by reason of any act or omission of the Grantee in connection with its Franchise Agreement, the City may withdraw the amount thereof from the security fund. To invoke the provisions of this Article, the City shall give the Grantee written notice of the default in the Grantee's performance. If within thirty (30) calendar days following such written notice from the City to the Grantee, the Grantee has not remedied the default to the satisfaction of the City, the City may proceed to withdraw the amount in question from the security fund, provided that, if by its nature the default cannot be remedied within thirty (30) days and the Grantee has demonstrated to the satisfaction of the City that it is making a continuing good faith effort to remedy the default, the City shall not draw on the security fund.

7.3 Notification. Within ten (10) business days of a withdrawal from the security fund, the City shall mail, by

certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Grantee.

7.4 Inadequate Fund Balance. If at the time of a withdrawal from the security fund by the City, the amount of the fund is insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the City until it is paid.

7.5 Replenishment. No later than thirty (30) days after mailing of notification to the Grantee by certified mail, return receipt requested, of a withdrawal under the security fund, the Grantee shall deliver to the City for deposit in the security fund an amount equal to the amount so withdrawn. Failure to make timely delivery of such amount to the City shall constitute a material violation of the Franchise.

7.6 Disposition. Upon termination of the Franchise under conditions other than those stipulating forfeiture of the security fund, the balance then remaining in the security fund shall be withdrawn by the City and paid to the Grantee within ninety (90) days of such termination, provided that there is then no outstanding material default on the part of the Grantee.

7.7 Grantor Rights. The rights reserved to the City with respect to Articles 5.0, 6.0, and 7.0 hereof are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by other law or a Franchise Agreement, and no

action, proceeding, or exercise of a right with respect to such sections shall affect any other right the City may have.

8.0 REMEDIES

8.1 Available Remedies. In addition to any other remedies available at law or equity, the City may pursue the following remedies in the event a Grantee or any other person violates this Ordinance, its Franchise Agreement, or applicable state or federal law:

a. Seek a determination from a court of competent jurisdiction that a provision of this Ordinance has been violated. If such a violation is found to exist by the Court the minimum fine imposed shall be \$50 and the maximum fine imposed per violation shall be \$250. Each day the violation is found to exist shall constitute a separate violation for which the above-indicated fine may be assessed. Any violation found to exist on the day of trial may be found, at a minimum, to have existed from the filing date of the complaint until the day of trial and the fine assessed accordingly, unless Grantee affirmatively proves that said violation did not exist during any part of or all of the aforementioned time period. If the Grantee is found by the Court to have been adjudicated in violation of any provision of this Ordinance on more than one occasion within two years, whether or not a violation of the same provision of this Ordinance, the minimum fine per violation shall be \$100 and the maximum fine per violation shall be \$500.

b. Seek legal or equitable relief from any court of competent jurisdiction.

c. Apply any remedy provided for in a Franchise Agreement, including enforcing provisions, if any.

8.2 Revocation or Termination of Franchise.

8.2.1 City Right To Revoke Franchise. The City shall have the right to revoke the Franchise for a Grantee's substantial failure to construct or operate the Cable System as required by this Ordinance or a Franchise Agreement, for defrauding or attempting to defraud the City or Subscribers, if the Grantee is declared bankrupt, or for any other material violation of this Ordinance or material breach of a Franchise Agreement. To invoke the provisions of this Article, the City shall give the Grantee written notice of the default in its performance. If within thirty (30) calendar days following such written notice from the City to the Grantee, the Grantee has not taken corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the City, the City may give written notice to the Grantee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Grantee has defrauded or attempted to defraud the City or its Subscribers, or in the event the Grantee is declared bankrupt. In the case of a fraud or attempted fraud, the Franchise may be revoked after the hearing required under Article 8.2.2; revocation for bankruptcy shall be governed by Article 8.2.3.

8.2.2 Public Hearing. Prior to revoking a Franchise, the City shall hold a public hearing, on thirty (30) calendar days' ^{written} notice, at which time the Grantee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine to revoke the Franchise based on the information presented at the hearing, and other information of record. If the City determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Grantee.

8.2.3 Revocation After Assignment for Benefit of Creditors or Appointment of Receiver or Trustee. To the extent provided by law, any Franchise may, at the option of the City following a public hearing, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

a. Such assignment, receivership, or trusteeship has been vacated; or

b. Such assignee, receiver, or trustee has fully ^{material} complied with the/terms and conditions of this Ordinance and a Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be

bound by the terms and conditions of this Ordinance and a Franchise Agreement, and such other conditions as may be established or as are required under Article 13.0 of this Ordinance.

c. In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Grantee, the City may revoke the Franchise, following a public hearing before the City, by serving notice on the Grantee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless the City has approved the Transfer of the Franchise to the successful bidder, and the successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance, and such other conditions as may be established or as are required pursuant to Article 9.0 of this Ordinance.

8.2.4 Procedures on Revocation, Abandonment, and Termination. If the City revokes a Franchise, or if for any other reason a Grantee abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective:

a. The City may require the former Grantee to remove its facilities and equipment located in the Public Rights-of-Way and on public premises at the former Grantee's expense. If the former Grantee fails to do so within a reasonable period

of time, the City may have the removal done at the former Grantee's and/or surety's expense. The foregoing provisions shall not apply if, within three (3) months after expiration, termination or revocation of the Franchise, the Grantee obtains certification from the FCC to operate an open video system or any other federal or state certification to provide telecommunications services.

b. In the event of revocation, the City, by written order, may acquire ownership of the Cable System at not less than fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the franchise itself, as specified at 47 U.S.C. §§547(a)(1).

c. If a Cable System is abandoned by a Grantee or the Franchise otherwise terminates, the ownership of all portions of the Cable System in the Public Rights-of-Way shall revert to the City and the City may sell, assign, or Transfer all or part of the assets of the System. If a Grantee abandons a portion of its System, the ownership of the abandoned portions of the Cable System in the Public Rights-of-Way shall revert to the City and the City may sell, assign or transfer the abandoned facilities. A Cable System or a portion thereof shall be deemed "abandoned" if a Grantee (i) gives the City written notice of its decision to abandon the System or the portion in question; or (ii) fails to provide Cable Service to Subscribers served by the System or the relevant portion thereof on a continuous basis for a period of thirty (30) consecutive calendar days or more.

8.2.5 Forfeiture for Failure To Comply With Franchise Obligation. Notwithstanding any other provision of this Ordinance other than the force majeure clause of Section 17.2, where the City has issued a Franchise specifically conditioned in the Franchise Agreement on the completion of construction, System upgrade, or other specific obligation by a specified date, failure of the Grantee to complete such construction or upgrade, or to comply with such other specific obligations as required, will result in the automatic forfeiture of the Franchise without further action by the City where it is so provided in the Franchise Agreement, unless the City, at its discretion and for good cause demonstrated by the Grantee, grants an extension of time.

8.3 Obligation of Compliance. The City's exercise of one remedy or a Grantee's payment of liquidated damages or penalties shall not relieve a Grantee of its obligations to comply with its Franchise. In addition, the City may exercise any rights it has at law or equity.

8.4 Relation to Insurance and Indemnity Requirements. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit a Grantee's duty to indemnify the City in any way; nor shall such recovery relieve a Grantee of its obligations under a Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have; provided that this section

shall not be interpreted as permitting the City to recover twice for the same damage . In addition, any civil fine imposed pursuant to Section 8.1(a) or other applicable law shall not be treated as a recovery for purposes of this section.

9.0 TRANSFERS

9.1 City Approval Required. No Transfer shall occur without prior approval of the City; provided, however, that no such approval shall be required for Transfers resulting from the transfer of ownership interests between existing holders of ownership interests in a Grantee, where such holders were also holders of ownership interests in the Grantee at the time of the original grant of the Franchise to the Grantee.

9.2 Application. An application for a Transfer shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the information required under federal law and in Article 4.4.1-4, 4.4.9-11, 4.4.13, and 4.4.15 of this Ordinance shall be provided with respect to the proposed transferee.

9.3 Determination by City. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the City shall not unreasonably withhold its consent, but shall first consider (i) the legal, financial, and technical qualifications of the

transferee to operate the System; (ii) whether the incumbent cable operator is in compliance with its Franchise Agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; (iii) whether the transferee owns or controls any other Cable System in the City, or whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the City; and (iv) whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the City's interest under this Ordinance, the Franchise Agreement, or other applicable law, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost. The City reserves the right to review the purchase price of any Transfer or assignment of a Cable System. To the extent permitted by applicable law, any negotiated sale value which the City deems unreasonable will not be considered in the rate base for any subsequent request for rate increases.

9.4 Transferee's Agreement. No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Ordinance and the Franchise Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Grantee under this Ordinance and the Franchise Agreement for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

9.5 Approval Does Not Constitute Waiver. Approval by the City of a Transfer of a Franchise shall not constitute a waiver or release of any of the rights of the City under this Ordinance or a Franchise Agreement, whether arising before or after the date of the Transfer.

9.6 Processing Fee. As a condition of considering a Transfer, the City may impose a fee on the transferee to cover its estimated out-of-pocket expenses in considering the application for Transfer of a Franchise. Any amount collected in excess of the estimated amount shall be returned to the transferee.

10.0 FRANCHISE FEE

10.1 Finding. The City finds that the Public Rights-of-Way of the City, county, and state to be used by a Grantee for the operation of a Cable System are valuable public property acquired and maintained by the county, state, and City at great expense to the taxpayers. The City further finds that the grant of a Franchise to use Public Rights-of-Way is a valuable property right without which a Grantee would be required to invest substantial capital.

10.2 Payment to City. As compensation for use of the Public Rights-of-Way and in light of the scope of any Franchise, in addition to providing channels, facilities and other support for public, educational and governmental use of the Cable System, a Grantee shall pay the City a Franchise fee. The amount of the

fee shall be specified in a Franchise Agreement. The franchise fee shall be paid annually, provided that provisions for more frequent payments may be specified in a Franchise Agreement. At least once a year the Grantee shall provide the City a report setting forth the total of Gross Revenues for the year or other period in question and identifying the amount of revenues attributable to each category of Gross Revenues received by the Grantee, including non-Subscriber Gross Revenues, and the number of Subscribers receiving each category of Cable Service offered by the Grantee.

10.2.1 City Right To Request Audit . The City shall have the right to retain an independent auditor to (i) audit the records of a Grantee to verify the computation of amounts payable under this Ordinance or a Franchise Agreement; and (ii) recompute any amounts determined to be payable under this Ordinance or a Franchise Agreement, whether the records are held by the Grantee, an Affiliate, or any other entity that collects or receives funds related to the Grantee's operation in the City, including, by way of illustration and not limitation, any entity that sells advertising on the Grantee's behalf. The Grantee shall be responsible for all reasonable costs associated with any such audit, including the auditor's fees, as a cost incidental to the enforcement of the Franchise, and shall have no control over the identity or selection of the auditor. The City shall have sole discretion in selecting the auditor and shall not be responsible for any costs associated with the audit. The City shall have the

right to review the auditor's report and methodology, including the right to obtain an explanation of all of the auditor's assumptions and calculations, and the right to challenge and request changes to any such assumptions and calculations. The City shall not, however, be permitted to obtain copies of documents received by the auditor, with the exception of documents voluntarily provided by the Grantee to the City, or subject to copying by the City pursuant to Section 15.1. The Grantee shall be responsible for providing all such records to the auditor, without regard to by whom they are held. The records shall be maintained for at least three (3) years. Any additional amounts due to the City as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. The City may exercise its audit right no more frequently than once per year, and only upon written notice to the Grantee.

10.2.2 Maintenance of Records. A Grantee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the City to (i) determine the cost of assets of the Grantee which are used in providing services within the City for purposes of assessing any personal property or other taxes and for purposes of verifying any filings that may be made in connection with any cost of service proceedings, and (ii) to determine Gross Revenues. For purposes of assessing

state and local taxes, the cost of assets shall be determined in accordance with any applicable provision of state law. For purposes of any cost of service proceedings, and for purposes of assessing state and local taxes if state law does not provide a method, the cost of assets shall be determined in accordance with FCC rules pertaining to cost of service proceedings.

11.0 CONSTRUCTION PROVISIONS

11.1 System Construction Schedule. Every Franchise Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System.

11.2 Construction Standards.

11.2.1 Construction Shall Be in Accordance With All Applicable Laws. The construction, operation, maintenance, and repair of a Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code, other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes, and laws and accepted industry practices, all as hereafter may be amended or adopted.

11.2.2 Wires To Cause Minimum Inconvenience. All wires, cable lines, and other transmission lines; equipment, and

structures shall be installed and located to cause minimum interference with the rights and convenience of property owners.

11.2.3 Installation of Equipment To Be of Permanent Nature. All installation of electronic equipment shall be of a permanent nature, using durable components.

11.2.4 Antennae. Without limiting the foregoing, to the extent applicable, antennae and their supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

11.2.5 Good Engineering Practices. Without limiting the foregoing, all of a Grantee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the City shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

11.2.6 Safety Practices. All safety practices required by law shall be used during construction, maintenance, and repair of a Cable System. A Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

11.2.7 No Interference With Other Utilities. A Grantee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the City of their use of any Public Rights-of-Way.

11.2.8 Repair of Rights-of-Way. Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System or otherwise, including installation, repair, maintenance or replacement of a Grantee's equipment shall be promptly repaired by the Grantee.

11.2.9 Removal of System Due To Conditions in Rights-of-Way. A Grantee shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of Way maintenance or repair (including resurfacing

or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; Public Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby; provided, however, that the Grantee shall, in all such cases, have the privilege of abandoning any property in place.

11.2.10 Removal by City Due to Emergency. In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the City may remove, relay, or relocate that portion of the Cable System. Unless the nature of the emergency or danger is such that immediate action is necessary to preserve life or property or to prevent physical harm to any individual, the City shall provide telephonic notice to the Grantee prior to removing, relaying or relocating any portion of a Grantee's Cable System.

11.2.11 Raising or Lowering Wires To Permit Moving of Buildings. A Grantee shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Grantee shall have the authority to require such payment in advance, except in the case where the requesting Person is the

the City, in which case no such payment shall be required. The Grantee shall be given reasonable advance notice to arrange for such temporary wire changes, as provided in 35-A M.R.S.A.

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11.2.12 Authority to Trim Trees. A Grantee shall have the authority to trim trees that overhang a Public Right-of-Way of the City so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of the Grantee. Except in emergencies, a Grantee shall notify the City at least one business day prior to performing any such trimming. At the option of the City, such trimming may be done by the City or under the City's supervision and direction, at the expense of the Grantee.

11.2.13 Use of Existing Utility Facilities. A Grantee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles or support equipment in Public Rights-of-Way without the express permission of the City. Copies of agreements for use of conduits or other facilities shall be filed with the City as required by a Franchise Agreement or upon the City's written request.

11.2.14 Undergrounding of Cable. (a) In Public Rights-of-Way or other places where electrical and telephone utility wiring is located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Grantee's Cable System also shall be located underground. (b) Between a Public Right-of-Way and a

Subscriber's residence, if either electric or telephone utility wiring is aerial, a Grantee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation. Where existing subdivision approvals, deed covenants, municipal zoning or other legal restrictions require underground location of utilities, Grantee's cable shall be located underground, and the Subscriber shall bear the additional cost of such installation on their property as a condition of receiving cable service.

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11.2.15 City Use of Grantee's Poles. The City shall have the right to install and maintain free of charge upon the poles owned by a Grantee any wire and pole fixtures that do not materially interfere with the Cable System operations of the Grantee.

11.2.16 City Approval of Construction. Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable system authorized under this Ordinance /a Grantee shall first submit to the City and other designated parties for approval a concise description of the Cable System proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of a Cable System shall be commenced by any Person until the Grantee has obtained all building permits, street operating permits or other approvals required by the City under any ordinance, regulation or procedure generally applicable to such activities.

11.2.17 Contractors and Subcontractors. Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances. The Grantee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. Each contractor and



subcontractor must perform work in compliance with all applicable provision of law and a Franchise Agreement, and the Grantee shall implement a quality control program to ensure that the work is so performed.

11.3 Publicizing Proposed Construction Work. Except in emergencies or to restore outages, Grantee shall publicize proposed construction work prior to commencement of that work by causing written notice of such construction work to be delivered to the City and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice, including use of local informational channels. Whenever practicable, such notice shall be given at least one (1) week prior to commencement of the work concerned.

11.4 Continuity of Service.

11.4.1 Subscriber Right. It is the right of all Subscribers in a Grantee's Franchise Area to receive all services that a Grantee is then providing under the terms of a valid Franchise as long as their financial and other obligations to the Grantee are satisfied; provided, however, that to the extent a Grantee's agreements with its programming providers prohibit the Grantee from providing certain Cable Services to nonresidential Subscribers, the Grantee may exclude such services from its offerings to nonresidential Subscribers.

11.4.2 Assurance of Continuous Uninterrupted Service. A Grantee shall ensure that all Subscribers receive continuous uninterrupted service. To this end, Grantee shall: (a) In the

event of a Sale or Transfer of its Franchise, cooperate with the City to assure an orderly transition from it to another Grantee and take all steps necessary to maintain service to Subscribers until the Sale or Transfer has been completed; (b) not abandon service to the entire City without having given 12 months' prior notice to the City; and (c) not abandon service to any portion of the City (excepting termination of service to individual subscribers as otherwise permitted) without having given 6 months' prior written notice to the City. Following such notice, the Grantee shall continue to be obligated to comply with the terms and conditions of its Franchise Agreement and applicable laws and regulations and shall cooperate with the City to assure an orderly transition from it to another Grantee.

11.4.2 Abandonment of System. If a Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with this Article 11.0 during any Transition Period, the City, at its option, may operate the System, designate another entity to operate the System temporarily until the Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Grantee selected by the City is providing service, or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System. In addition,

any abandonment of a System shall be subject to all of the provisions of 30-A M.R.S.A. § 3008(3)(B).

11.4.3 Injunctive Relief. The City shall be entitled to injunctive relief under the preceding paragraph if:

a. The Grantee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the City authorizes a longer interruption of service or as permitted pursuant to the force majeure clause of §17.2; or

b. The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

12.0 SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

In addition to satisfying such requirements as may be established through the application process, every Cable System shall be subject to the following conditions, except as prohibited by federal law:

12.1 Provision of Service. Each Franchise Agreement shall contain a line extension policy that shall govern a Grantee's obligation to extend service. Unless otherwise specified in a Franchise Agreement, after Cable Service has been established by activating trunk distribution cable for an area specified in a Franchise Agreement, a Grantee shall provide Cable Service to any household requesting Cable Service within that area, including each multiple dwelling unit in that area, except for multiple

dwelling units to which it cannot legally obtain access. In providing services to multiple dwelling units, a Grantee shall comply with all applicable provisions of 14 M.R.S.A. § 6041.

12.2 Full Video Service to Municipal Buildings; Facilities and Equipment. A Franchise Agreement may require a Grantee to install, at no charge, at least one service outlet at all municipal buildings within the Franchise Area that can be reached by a standard drop, and may provide that the Grantee shall charge only its time and material costs for any additional service outlets to such facilities. A Franchise Agreement may also require a Grantee to provide Basic Cable Service and the lowest tier of Cable Programming Services to such buildings free of charge. Finally, a Franchise Agreement may provide that such service outlets shall be capable of providing the full range of non-cable electronic data and telecommunication services provided by a Grantee, and may require other facilities and equipment and channel capacity in accordance with the Cable Act, at rates and terms set out in the Franchise Agreement.

12.3 Technical Standards.

12.3.1 FCC Standards. Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the City in a manner consistent with federal law.

12.3.2 Facilities Shall not Interfere with Others' Signals or Facilities. A Grantee shall not design, install, or operate its facilities in a manner that will interfere with the

signals of any broadcast station, the facilities of any public utility, the Cable System of another Grantee, or individual or master antennae used for receiving television or other broadcast signals.

12.4 Proof of Performance Tests. At the times specified in a Franchise Agreement or as required by FCC rules, a Grantee shall perform proof of performance tests, and such other tests as may be specified in a Franchise Agreement, designed to demonstrate compliance with this Article, the Franchise Agreement, and FCC requirements. The Grantee shall provide the results of proof of performance tests promptly to the City, upon the City's written request. The City shall have the right to inspect the Cable System during and after its construction to ensure compliance with this Article, the applicable Franchise Agreement, and applicable provisions of local, state and federal law, and may require the Grantee to perform additional tests based on the City's investigation of Cable System performance or on Subscriber complaints.

13.0 CONSUMER PROTECTION PROVISIONS

13.1 Telephone and Office Availability.

13.1.1 Office; Hours of Operation; Telephone. Each Grantee shall maintain an office at a location reasonably convenient to Subscribers that shall be open at least 50 hours each week, including, during the hours of 8:30 a.m. to 5 p.m. Monday through Friday and 8:30 a.m. to 12 p.m. Saturday exclusive of all State and Federal holidays, to allow

Subscribers to request service and conduct other business. Each Grantee shall ensure that its office shall meet all applicable access requirements of the Maine Human Rights Act and the Americans with Disabilities Act, and all other applicable federal and state laws and regulations. Each Grantee shall perform service calls, installations, and disconnects during at least the hours for which its office is open for business, provided that a Grantee shall respond to outages twenty-four (24) hours a day, seven (7) days a week. Each Grantee shall establish a publicly listed toll-free telephone number, and shall either ensure that its telephone service has TTY and TDD capabilities, or contract with a third party to provide Grantee with such services. The phone must be answered by customer service representatives at least during the hours for which the Grantee's office is open for business, for the purpose of receiving requests for service, inquiries, and complaints from Subscribers; after those hours a Grantee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Grantee can respond to service outages as required herein.

13.1.2 Telephone Answering Time. Telephone answering time shall not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. This standard shall be met

ninety (90) percent of the time, measured quarterly. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Any after-hours answering service used shall comply with the same telephone answer time standard set forth in this Article 13.1. If required by its Franchise Agreement, a Grantee shall supply statistical data to verify it has met the standards set forth herein.

13.1.3 Staff. A Grantee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Subscriber's residence.

13.2 Scheduling Work.

13.2.1 Appointments. All appointments for service, installation, or disconnection shall be specified by date. Each Grantee shall offer a choice of morning, afternoon, or all-day appointment opportunities. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the time of appointment and the appointment rescheduled.

13.2.2 Missed Appointments. Subscribers who experience a missed installation appointment due to the fault of a Grantee shall receive standard installation free of charge. If the installation was to have been provided free of charge, or for other appointments, the Subscriber shall receive one (1) month

of the subscribed to Service Tier free of charge, or a credit of \$20.00, whichever is greater.

13.2.3 Mobility-Limited Customers. With regard to mobility-limited customers, upon Subscriber request, each Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

13.2.4 Acknowledgement of and Response to Customer Requests. Requests for service, repair, and maintenance must be acknowledged by a Grantee within twenty-four (24) hours, or prior to the end of the next business day. A Grantee shall respond to all other inquiries (except billing inquiries) within five (5) business days of the inquiry or complaint. A Grantee shall acknowledge receipt of billing inquiries within five (5) days and provide a detailed response within thirty (30) days.

13.2.5 Completion of Work. Repairs and maintenance for service interruptions and other repairs not requiring in-unit work must be initiated within twenty-four (24) hours and must be completed within sixty-two (62) hours. All other requests for service must be completed within three (3) days from the date of the initial request, except installation requests, provided that a Grantee shall complete the work in the shortest time possible where, for reasons beyond the Grantee's control, the work could not be completed in those time periods even with the exercise of

all due diligence; the failure of a Grantee to hire sufficient staff or to properly train its staff shall not justify a Grantee's failure to comply with this provision. Except as federal law requires, no charge shall be made to the Subscriber for this service, except for the cost of repairs to the Grantee's equipment or facilities where it can be documented that the equipment or facility was damaged by a Subscriber.

13.2.6 Work Standards. The standards of Articles 13.2.4 and 13.2.5 shall be met ninety-five (95) percent of the time, measured on a quarterly basis.

13.3 Notice to Subscribers.

13.3.1 Provision of Information to Subscribers. A Grantee shall provide each Subscriber at the time Cable Service is installed, and at least annually thereafter, written instructions for placing a service call, filing a complaint, or requesting an adjustment. Each Grantee shall also provide a notice informing subscribers of how to communicate their views and complaints to the cable company, the proper municipal official and the State Attorney General; stating the responsibility of the State Attorney General to receive consumer complaints concerning matters other than channel selection and rates; and stating the policy regarding and method by which subscribers may request rebates or pro-rata credits as provided in this Ordinance or applicable federal or state law or regulation. In addition, all Grantees shall provide Subscribers to their services a schedule of rates and charges, a copy of the

service contract, delinquent Subscriber disconnect and reconnect procedures, and a description of any other of the Grantee's policies in connection with its Subscribers. Copies of these notices shall be provided to the City. A Grantee shall provide the City and each Subscriber at least thirty (30) days advance notice of any significant changes in any of the information required by this section.

13.3.2 Disclosure of Price Terms. All Grantee promotional materials, announcements, and advertising of residential Cable Services to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a Grantee shall take appropriate steps to ensure that the customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order.

13.3.3 Public File. Each Grantee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all written promotional offers made to Subscribers by the Grantee. Material in the file shall be retained for at least one year after the later of the date of mailing or public announcement of the information contained in a notice.

13.4 Interruptions of Service. A Grantee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the City of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service and that occurs between the hours of 12:00 a.m. and 6:00 a.m. shall not require such notice to Subscribers, and notice to the City may be given no less than twenty-four (24) hours prior to the anticipated service interruption.

13.5 Billing.

13.5.1 Proration of First Billing Statement. A Grantee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit, made or given by the Subscriber to the Grantee.

13.5.2 Itemization. A Grantee's billing statement must itemize each category of service and equipment provided to the Subscriber and state clearly the charge therefor.

13.5.3 Payment Due Date. A Grantee's billing statement must show a specific payment due date not earlier than ten (10) days after the date the statement is mailed. Any balance not received within thirty (30) days after the due date may be assessed a late fee not exceeding one and one-half percent (1.5%) of the amount due or any higher amount allowed by State law. the late fee shall appear on the following month's billing statement.

13.5.4 In Person Payments. A Grantee must notify the Subscriber that he or she can remit payment in person at the Grantee's office in the greater Bangor area and inform the Subscriber of the address of that office.

13.5.5 No Late Fees for Failures by Grantee. Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Grantee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

13.5.6 Credit for Lack or Impairment of Service. Upon request, the account of any Subscriber shall be credited a prorated share of the monthly charge for the service if said Subscriber is without service or if service is substantially impaired for any reason for a period exceeding six (6) hours during any twenty-four (24) hour period, except where it can be documented that a Subscriber seeks a refund for an outage or impairment which that Subscriber caused, or in the case of a planned outage occurring between the hours of 12:00 midnight and 6:00 a.m. of which the Subscriber had prior notice.

13.6 Disconnection/Downgrades.

13.6.1 Subscriber Termination. A Subscriber may terminate service at any time.

13.6.2 Prompt Disconnection or Downgrade on Request: Charges. A Grantee shall promptly disconnect or downgrade any Subscriber who so requests from the Grantee's Cable System, unless the Subscriber unreasonably hinders access by the Grantee

to equipment of the Grantee or the Subscriber's premise to which the Grantee must have access to complete the requested disconnection. No period of notice prior to voluntary termination or downgrade of service may be required of Subscribers by any Grantee. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. So long as the Subscriber returns equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any Grantee for any Cable Services delivered after the date of the request to disconnect.

13.6.3 Subscriber Return of Equipment. A Subscriber may be asked, but not required, to disconnect a Grantee's equipment and return it to the business office; provided that if a Subscriber requests that a Grantee pick up the equipment, the Subscriber shall provide reasonable access to the Subscriber's premises during Grantee's business hours to allow the Grantee to retrieve the equipment.

13.6.4 Refund of Security Deposit. Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after the converter has been recovered by the Grantee. The refund process shall take a maximum of thirty (30) days or the next billing cycle from the date disconnection was completed as required herein to the date the customer receives the refund.

13.6.5 Disconnection for Failure To Pay Fee. If a Subscriber fails to pay a monthly Subscriber or other fee or

charge, a Grantee may disconnect the Subscriber's service outlet; however, such disconnection shall not be effected until at least forty-five (45) days after the due date of the monthly Subscriber fee or other charge and, after ten (10) days' advance written notice of intent to disconnect is given to the Subscriber in question. If the Subscriber pays all amounts due, including late charges before the date scheduled for disconnection, the Grantee shall not disconnect service. Subject to Section 13.6.2., after disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Grantee shall promptly reinstate service.

13.6.6 Disconnection for Damage to System or Equipment. A Grantee may immediately disconnect a Subscriber if the Subscriber is damaging or destroying the Grantee's Cable System or equipment. After disconnection, the Grantee shall restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including reconnect fees, a reasonable security deposit, and amounts owed the Grantee for damage to its Cable System or equipment.

13.6.7 Disconnection for Signal Leakage. A Grantee may also disconnect a Subscriber that in any way, intentionally or otherwise, causes signal leakage in excess of federal limits. It may do so in accordance with Federal rules and requirements or, if the Subscriber fails to take steps to correct the problem. It may also do so without notice in the event of a danger to the public safety, provided that the

Grantee shall immediately notify the Subscriber of the problem and, once the problem is corrected, reconnect the Subscriber without charge.

13.6.8 Removal of Grantee Property. Except as federal law may otherwise provide, if a Subscriber terminates service, a Grantee may offer the Subscriber the opportunity to acquire any wiring located on the premises that is the property of Grantee at replacement cost. If the Subscriber declines to purchase the wiring, the Grantee must remove its property from the Subscriber's premises within seven (7) days, ^{if requested by the Subscriber} If a Grantee fails to remove the wiring in that period, the Grantee shall make no further attempt to remove the wiring or restrict its use.

13.7 Changes in Service. In addition to rights reserved by the City, Subscribers shall have rights with respect to alterations in service. The Grantee may not alter the service being provided to a class of Subscribers (including by retiering, restructuring or otherwise) without the express permission of each Subscriber, unless it complies with this Article. At the time the Grantee alters the service it provides to a class of Subscribers, it must provide each Subscriber thirty (30) days' notice, explain the substance and full effect of the alteration, and provide the Subscriber the right within the thirty (30) day period following notice to opt to receive any combination of services offered by Grantee. Except as federal law otherwise provides, Subscribers may not be required to pay any charge (other than the properly noticed rates), including an upgrade or

downgrade charge, in order to receive the services selected. No charge may be made for any service or product for which there is a separate charge that a Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

13.8 Deposits. A Grantee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits shall be placed in an interest-bearing account, and the Grantee shall return the deposit, plus interest earned to the date repayment is made to the Subscriber. Interest will be calculated at the prevailing commercial savings rate on all late payments.

13.9 Recording Subscriber Complaints. A Grantee shall maintain a record of subscriber complaints in accordance with 30-A M.R.S.A. 3010(4):

a. Every franchisee shall keep a record or log of all written complaints received regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters. These records shall be maintained for a period of 2 years.

b. The record shall contain the following information for each complaint received:

- (1) Date, time and nature of the complaint;
- (2) Name, address and telephone number of the person complaining;

(3) Investigation of the complaint;

(4) Manner and time of resolution of the complaint;

(5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and

(6) Consistent with subscriber privacy provisions contained in the Cable Act and applicable FCC regulations, every Grantee shall make the logs or records of complaints available to any authorized agent of any franchising authority having a franchise with that Grantee or any authorized agent of a municipality considering a franchise with that Grantee upon request during normal business hours for on-site review.

13.10 Remedies for Violators. In addition to the remedies set forth elsewhere in this Ordinance and in the Franchise Agreement, subscribers shall have available the remedies provided by 30-A M.R.S.A. § 3010(7).

14.0 RATE REGULATION

14.1 City May Regulate Rates. The City may regulate all rates and charges except to the extent it is prohibited from doing so by law, and if the City does exercise its rate regulatory authority, no rate or charge may be imposed or increased without the prior approval of the City except such rates and charges that the City is prohibited from regulating. Subject to the foregoing, any change made without prior approval

is an illegal change, and a Grantee is prohibited from requesting or requiring a Subscriber to pay an illegal rate as a condition of providing service. This section shall not be construed to mean that any Grantee has consented or will consent to subject itself to rate regulation.

14.2 Authority To Adopt Regulations. All rates that are subject to regulation by the City must be reasonable. The City may adopt such regulations, procedures, and standards as it deems necessary to implement rate regulation and may regulate rates by amendment to this Ordinance, by a separate resolution or ordinance, by amendment to a Franchise Agreement, or in any other lawful manner. This section shall not be construed to mean that any Grantee has consented or will consent to subject itself to rate regulation.

14.3 Rate Changes.

14.3.1 Advance Notice of Rate Changes. At least thirty (30) days prior to implementing any increases in rates, or changes in channel positions, programming, or service terms or conditions, a Grantee shall provide the City and each Subscriber with written notice describing any such changes it plans to make and the proposed effective dates for the changes. A Grantee shall not be required to provide 30 days' notice of rate decreases or temporary promotional offers that result in lower rates for Subscribers, provided that it has given the City notice of such decreases and offers prior to implementation.

14.3.2 Explanation of Rate Changes. In addition to the required notice, before it alters services or service terms or conditions, a Grantee must provide a reasonably simple and clear written notice explaining the substance and full effect of the alteration, including the effect on rates and service options and the effect of the change on the use of other consumer electronic equipment. Such written notice shall be provided to the City at least thirty (30) days, and to Subscribers at least thirty (30) days, before the change.

14.3.3 Changes Made Without Required Notice Invalid. Any change made without the required 30 days' notice shall be of no force or effect, and a Grantee shall be obligated to refund any increased amount collected without the required 30 days' notice, and to restore service to the prior existing status, at least until the required notice is provided. This subsection shall not limit the right of a Grantee to implement any rate decreases or temporary promotional offers that result in lower rates for Subscribers immediately upon providing written notice of these rate changes to the City. This subsection shall not be interpreted to limit the City's right to exercise its rate regulation authority under Article 14.1 of this Ordinance, the availability of remedies under applicable laws or regulations, or rights under the customer service standards set forth in Article 13.0 of this Ordinance.

15.0 RECORDS AND REPORTS

15.1 Open Books and Records. The City shall have the right to inspect and copy at any time after reasonable notice during normal business hours at a Grantee's local office, all materials and records of the Grantee relevant to the City's management of the Public Rights-of-Way and regulation of customer service and consumer affairs including all maps, plans, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and discs or other storage media and other like material which the City reasonably deems appropriate in order to monitor compliance with the terms of this Ordinance, a Franchise Agreement, or applicable law. A Grantee shall make available to the City, to the best of its ability, the same types of materials which the City deems relevant and which are held by an Affiliate, a cable operator of the Cable System, and any contractor, subcontractor or any person holding any form of management contract for the Cable System. The Grantee is responsible for collecting, to the best of its ability, such requested information and producing it at its offices in the greater Bangor area, and as part of its application it must affirm that it can and will do so. The City shall preserve the confidentiality on proprietary business information of a Grantee or another party provided to the City by the Grantee, to the extent permissible under Maine law. To that end, the Grantee shall clearly identify any proprietary business information that it believes to be entitled to confidential treatment, so that the

City may establish appropriate safeguards against improper disclosure. The City shall also have the right to inspect at any time after reasonable notice during normal business hours at a Grantee's local office all materials relevant to the financial condition of the Grantee, including all books, records, receipts, contracts, financial statements, computer records, codes, programs, and discs or other storage media and other like material which the City reasonably deems appropriate in order to monitor compliance with the terms of this Ordinance, a Franchise Agreement, or applicable law. A Grantee shall make available for inspection by the City, to the best of its ability, the same types of materials that the City deems relevant and that are held by an Affiliate, a cable operator of the Cable System, and any contractor, subcontractor or any person holding any form of management contract for the Cable System. The Grantee is responsible for collecting, to the best of its ability, such requested information and producing it at its offices in the greater Bangor area, and as part of its application it must affirm that it can and will do so. The City shall preserve the confidentiality of proprietary business information of a Grantee provided for inspection by the City by the Grantee, to the extent permissible under Maine law. To that end, the Grantee shall clearly identify any proprietary business information that it believes to be entitled to confidential treatment, so that the City may establish appropriate safeguards against improper disclosure.

15.2 Required Reports. A Grantee shall file the following with the City in a form acceptable to the City:

15.2.1 Annual Construction Report. An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the City. Such report also shall contain any revisions to the System "as built" maps filed with the City. The annual report shall be provided at the time specified in the Franchise Agreement.

15.2.2 Notices Instituting Civil or Criminal Proceedings. A Grantee shall provide the City with copies of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Grantee, or any Affiliate of the Grantee, to the extent the same may affect or bear on operations in the City. A notice that an Affiliate that has a management contract for the Cable System was not in compliance with FCC EEO requirements within the work unit serving the City would be deemed to affect or bear on operations in the City. This material shall be submitted to the City at the time it is filed or within five (5) days of the date it is received.

15.2.3 Bankruptcy Declarations. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly. This material shall be submitted to the City at the time it is filed or within five (5) days of the date it is received.

15.3 Reports To Be Provided on Request.

15.3.1 Reports Required by FCC. Upon the City's written request, a Grantee shall deliver to the City copies of all reports required by the FCC, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, pleadings, notices, and applications regarding the Cable System, or a group of Cable Systems of which the Grantee's Cable System is a part, submitted or received by the Grantee, an Affiliate, or any other Person on the behalf of the Grantee, either to or from the FCC, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Grantee's System, for the time period specified in the City's request.

15.3.2 Financial Reports. The City may request the following financial reports for the Franchise Area once per calendar year:

a. An ownership report, indicating all Persons who at any time during the preceding year did control or benefit from an interest in the Franchise of five (5) percent or more.

b. An annual income statement showing Subscriber revenue from each category of service and every source of non-Subscriber revenue. .

c. A current annual statement of all capital expenditures, including the cost of construction and of equipment, used or placed within the City.

d. An annual list of officers and members of the Board of Directors of the Grantee and any Affiliates.

e. An organizational chart showing what corporations or partnerships with more than a five (5) percent interest own the Grantee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership so identified and so on until the ultimate corporate and partnership interests are identified.

f. An annual report of each entity identified in Article 15.3.2.e which issues an annual report.

15.3.3 System and Operational Reports. The following System and operational reports shall be submitted annually upon request of the City:

a. An annual summary of the previous year's activities including, but not limited to, Subscriber totals for each category of service offered, including number of pay units sold, new services offered, and the amount collected annually from other Users of the System and the character and extent of the service rendered thereto.

b. An annual projection of System and service plans for the future.

15.4 Additional Reports. The Grantee shall prepare and furnish to the City, at a time reasonably prescribed by the City, such additional reports with respect to its operation, affairs, transactions, or property as the City may reasonably deem

necessary and appropriate to the performance of any of the rights, functions, or duties of the City in connection with this Ordinance or the Franchise Agreement.

15.5 Records Required.

15.5.1 Records To Be Maintained. A Grantee shall at all times maintain and shall deliver to the City upon request, the following records:

a. Records of all complaints maintained pursuant to Section 13.9.

b. A full and complete set of plans, records, and "as built" maps showing the exact location of all System equipment installed or in use in the City, exclusive of Subscriber service drops.

c. Records of outages, indicating date, duration, area, and the estimated number of Subscribers affected, type of outage, and cause.

d. Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

e. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

15.5.2 Additional Information. The City may request and a Grantee shall promptly provide additional information, reports, records, and documents as may be reasonably required from time to time for the performance by the City of any its rights, functions, or duties in conversations with this Ordinance or a Franchise Agreement.

15.6 Performance Evaluation.

15.6.1 City Discretion To Hold Public Sessions. The City may, at its discretion, hold scheduled performance evaluation sessions. All such evaluation sessions shall be open to the public.

15.6.2 Announcement of Sessions. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation.

15.6.3 Discussion Topics. Topics that may be discussed at any scheduled or special evaluation session may include, but are not limited to, system performance and construction, Grantee compliance with this Ordinance and a Franchise Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, if applicable, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

15.6.4 Grantee Cooperation. During the review and evaluation by the City, a Grantee shall fully cooperate with the

City and shall provide such information and documents as the City may need to reasonably perform its review.

15.7 Voluminous Materials. If the books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then a Grantee may request that the inspection take place at some other location, provided that (i) the Grantee must make necessary arrangements for copying documents selected by the City after review; and (ii) the Grantee must pay reasonable travel and additional copying expenses incurred by the City in inspecting those documents or having those documents inspected by its designee, if done outside the greater Bangor area.

15.8 Retention of Records; Relation to Privacy Rights. Each Grantee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Ordinance or a Franchise Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Article shall be read to require a Grantee to violate 47 U.S.C. § 551. Each Grantee shall be responsible for blacking out any data that federal or state law prevents it from providing to the City.

16.0 RIGHTS OF INDIVIDUALS PROTECTED

16.1 Discriminatory Practices Prohibited.

16.1.1 Discrimination Prohibited. A Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, programmers, or residents of the City on the basis

of race, color, religion, national origin, sex, age, physical handicap, or on any other basis prohibited by federal or state law. This provision is not intended to require a Grantee to provide any equipment or service free of charge to any Subscriber, unless such equipment or service is provided free in a manner that discriminates among Subscribers in a manner that is prohibited by state or federal law, or unless the provision of free equipment or service is required by state or federal law.

16.1.2 Discrimination for Exercise of Right Prohibited. A Grantee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Person to waive such rights as a condition of taking service.

16.1.3 Differential Rates Based on Subscriber Income Prohibited. A Grantee shall not deny access or levy different rates and charges on the residents of any particular geographical area because of the income of the residents of that geographical area.

16.1.4 Rate Preferences Prohibited. Except to the extent the City may not enforce such a requirement, a Grantee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Grantee may offer temporary, bona fide promotional discounts in order to attract or maintain

Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the City; a Grantee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner; and a Grantee may enter into bulk service agreements with multiple dwelling unit owners, if the rates under such agreements are established and applied in a uniform and consistent manner. A Grantee shall comply at all times with all applicable federal, state, and City laws, and all executive and administrative orders relating to non-discrimination.

16.2 Equal Employment Opportunity. A Grantee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, age, or any other basis prohibited by federal or state law. A Grantee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities.

16.3 Subscriber Privacy.

16.3.1 Grantee Shall Protect Subscriber Privacy. A Grantee shall at all times protect the privacy of all Subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551, and 30-A M.R.S.A. § 3010(6-A). A Grantee shall not condition Subscriber service on the Subscriber's grant of

permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent.

16.3.2 Selling Subscriber Information Prohibited.

Neither a Grantee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell or otherwise make available for commercial purposes the names, addresses, or telephone numbers of any Subscriber or Subscribers, or any information that identifies the individual viewing habits of any Subscriber or Subscribers.

17.0 MISCELLANEOUS PROVISIONS

17.1 Compliance With Laws. A Grantee shall comply with all applicable federal, state, and local laws and regulations as they become effective, unless otherwise stated.

17.2 Force Majeure. A Grantee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Grantee's control, and a Franchise shall not be revoked or a Grantee penalized for such noncompliance, provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and

integrity of the public, Public Rights-of-Way, public property, or private property.

17.3 Connections to System; Use of Antennae.

17.3.1 Subscriber Right to Attach Devices.

Subscribers shall have the right to attach devices to a Grantee's System to allow them to transmit signals or services for which they have paid to VCR's receivers, and other terminals provided that such terminals are located within the Subscriber's premises, and provided that such transmissions do not result in interference with the operations of Grantee's System, or violations of signal leakage compliance standards. Subscribers also shall have the right to use their own legally acquired remote control devices and tuners, and other similar equipment, and a Grantee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Grantee's System.

17.3.2 Requiring Disconnection of Antennae Prohibited.

A Grantee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes.

17.4 Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the

fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

17.5 Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Grantee and the City.

17.6 Captions. The captions and headings of this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Ordinance.

17.7 Repeal. The City of _____ Cable Television Ordinance adopted on _____ is hereby repealed, except that the repeal thereof shall not affect the validity of any franchise agreements issued pursuant thereto and except that said Ordinance shall remain in full force and effect for the trial and punishment of all past violations thereof and for recovery of penalties already incurred.

PASSED AND ADOPTED this ____ day of _____,
1994.

APPROVED:

Mayor

ATTEST:

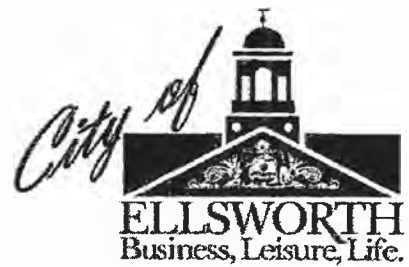
City Clerk

MVB\31400.1-E\104133-00001

Chapter 50
FUND BALANCE ORDINANCE
City of Ellsworth, Maine

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Repealed/Replaced 10/17/2011

FUND BALANCE ORDINANCE

A. Purpose

The City's Fund Balance is the accumulated difference between assets and liabilities within governmental funds. A sufficient fund balance allows the City to meet certain commitments and assignments of fund balance to help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events, mitigate negative revenue implications of federal or state budget actions, mitigate economic downturns, fund disaster or emergency costs, protect the City's creditworthiness, and fund non-recurring expenses identified as necessary by City Council.

B. Fund Type Definitions

The following definitions will be used in reporting activity in governmental funds. The City may or may not report all fund types in any given reporting period, based on actual circumstances and activity.

- **General Fund** is used to account for all financial resources not accounted for and reported in another fund.
- **Special Revenue Funds** are used to account and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specific purposes other than debt service or capital projects.
- **Debt Service Funds** are used to account for all financial resources restricted, committed, or assigned to expenditure for principal and interest.
- **Capital Project Funds** are used to account for all financial resources restricted, committed, or assigned to expenditure for the acquisition or construction of capital assets.
- **Permanent Funds** are used to account for resources restricted to the extent that only earnings, and not principal, may be used for purposes that support the City's purposes.

C. General Policy

This policy establishes limitations on the purposes for which Fund Balances can be used in accordance with Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting. The City's financial statements will report up to five components of Fund Balance: (1) Nonspendable Fund Balance; (2) Restricted Fund Balance; (3) Committed Fund Balance; (4) Assigned Fund Balance; and (5) Unassigned Fund Balance.

- **Nonspendable Fund Balance** consists of funds that cannot be spent due to their form (e.g. inventories and prepaids) or funds that legally or contractually must be maintained intact.
- **Restricted Fund Balance** consists of funds that are mandated for a specific purpose by external parties, constitutional provisions, or enabling legislation.
- **Committed Fund Balance** consists of funds that are set aside for a specific purpose by the City's highest level of decision making authority, City Council. Formal action must be taken prior to the end of the fiscal year. The same formal action must be taken to remove or change the limitations placed on the funds.
- **Assigned Fund Balance** consists of funds that are set aside with the intent to be used for a specific purpose by the City Council or an official that has been given

the authority to assign funds per the City's Procurement Policy. Assigned funds cannot cause a deficit in unassigned fund balance.

- **Unassigned Fund Balance** consists of excess funds that have not been classified in the previous four categories. All funds in this category are considered spendable resources. This category also provides the resources necessary to meet unexpected expenditures and revenue shortfalls.

D. Operational Guidelines

The following guidelines address the classification and use of fund balance in governmental funds:

- **Classifying Fund Balance Amounts** – Fund balance classifications describe the type of net resources that are reported in the governmental fund. An individual governmental fund may include nonspendable resources and amounts that are restricted, committed, or assigned, or any combination of those classifications. The general fund may also include an unassigned amount.
- **Encumbrance Reporting** – Encumbering amounts for specific purposes for which resources have already been restricted, committed or assigned should not result in separate display of encumbered amounts. Encumbered amounts for specific purposes for which amounts have not been previously restricted, committed or assigned, will be classified as committed or assigned, as appropriate, based on the definitions and criteria set forth in GASB Statement No. 54.
- **Prioritization of Fund Balance** – When fund balance resources are available for a specific purpose in more than one classification, it is the City's policy to use the most restrictive fund first in the following order: restricted, committed, assigned, and unassigned as needed.
- **Minimum Unassigned Fund Balance** - The City will maintain a minimum unassigned fund balance in its General Fund ranging from 10 to 20 percent of the previous fiscal year's actual gross City's expenditures. This minimum fund balance is used to maintain a budget stabilization commitment.
 - **Replenishing Deficiencies** – Should the fund balance falls below the minimum 10 percent range, a written plan to replenish the fund in a maximum of three fiscal years will be submitted to the City Council for approval as part of the annual budget process.
 - **Surplus Fund Balance** – Should the unassigned fund balance of the General Fund exceed the maximum 20 percent range, the City Council will consider increasing designated reserves, the City's appropriated contingency account, or the appropriated capital improvement account.

CHAPTER 51
REGISTRATION APPEALS BOARD

1. Establishment

Pursuant to the Maine Law on Elections, Title 21-A, Chapter 3, Section 103, the City of Ellsworth hereby establishes the Registration Appeals Board.

2. Appointment

- A. Board members shall be appointed by the City Council and sworn in by the City Clerk or other persons authorized to administer oaths.
- B. The Board shall consist of three members appointed as follows: The municipal committee of each of the major political parties shall nominate one member, who must be enrolled in the party of the committee that nominates the member, and the City Council shall appoint the persons nominated by the municipal committees and the 3rd member must be nominated by the City Clerk and appointed by the City Council. The City Clerk may give the municipal committees of the political parties a list of qualifications necessary for a person to fulfill the duties of the registration appeals board, and the municipal committees shall take those qualifications into consideration when nominating members to the board. The two members of the board nominated by the municipal committees of the major political parties may be members of the municipal committee nominating them and of the county or state committees of the political party that nominates them and may be members of a state or county delegation to a political convention. When a municipal committee nominates a member to the registration appeals board, it shall also nominate an alternate board member, who serves if the member nominated by the municipal committee is or becomes unable to serve. The City Clerk may not serve as a member or alternate member of the registration appeals board. “

3. Term of Office. Each member nominated by the municipal committees of the major political parties and appointed to the board shall serve for 3 years and until the member's successor is appointed and sworn. The member nominated by the clerk of the municipality and appointed to the board shall serve for four years and until that member's successor is appointed and sworn.

4. Chairperson of The Board. The member nominated by the City Clerk is chairman of the board.”

5. Vacancy. When there is a vacancy on the board, the alternate board member nominated by the municipal committee of the political party of the former incumbent shall serve. If an alternate is not available, the City Council shall

appoint a qualified person nominated by the municipal committee of the party of the former incumbent to fill the vacancy. If the vacancy is in the office of the chair of the board, the City Council shall appoint a qualified person nominated by the City Clerk to fill the vacancy. Vacancies must be filled for the remainder of the term of office.

6. Hours. Upon receipt of a complaint by a person aggrieved by the decision of the registrar, the chair of the registration board shall immediately fix a time and place for the board to meet for a prompt hearing. After hearing, the board may affirm, modify or reverse the decision of the registrar of voters. The aggrieved person may appeal the decision of the board to the District Court in accordance with Rules of Civil Procedure.
7. Actions of the Registration Appeals Board. A registration appeals board may only act by unanimous or majority action.
8. Removal from office. A member of the board may be removed from office at any time during the member's term by the appointing authority if the appropriate nominating authority nominates a replacement. Any replacement member shall serve out the remainder of the replaced member's term.

CITY HALL
1933



City of Ellsworth Fire Department

P.O. BOX 586
ELLSWORTH, MAINE 04605-0586
(207) 667-8666
Ellsfd@downeast.net

May 27, 2003

Branch Lake Emergency Response Plan

Mr. Steve Burgess
Maine Emergency Management Agency
State House Station 72
Camp Keyes, Augusta, Maine 04333-0072

Dear Mr. Burgess,

Here is the City of Ellsworth emergency action plan for the Branch Lake Dam. Dam # ME00265. This plan was approved and signed following a public hearing and action by the Ellsworth City Council on May 12, 2003.

Should you have any further questions or concerns please give me a call.

Sincerely,

A handwritten signature in cursive script that reads "R. B. McKenney". The signature is written in black ink and is positioned above the printed name and title.

Robert B. McKenney
Fire Chief

cc: City Manager Tim King

1-A

**MONITORING AND EMERGENCY WARNING PLAN
AND PROCEDURES**

FOR THE
Branch Lake Dam
NID# ME00265

LOCATED AT
Ellsworth, Hancock, Maine
(City (County)
Owned by
City of Ellsworth

ISSUE DATE: May 12, 2003

REVISED DATE:

City of Ellsworth
Non Federal Dam Emergency Action Plan

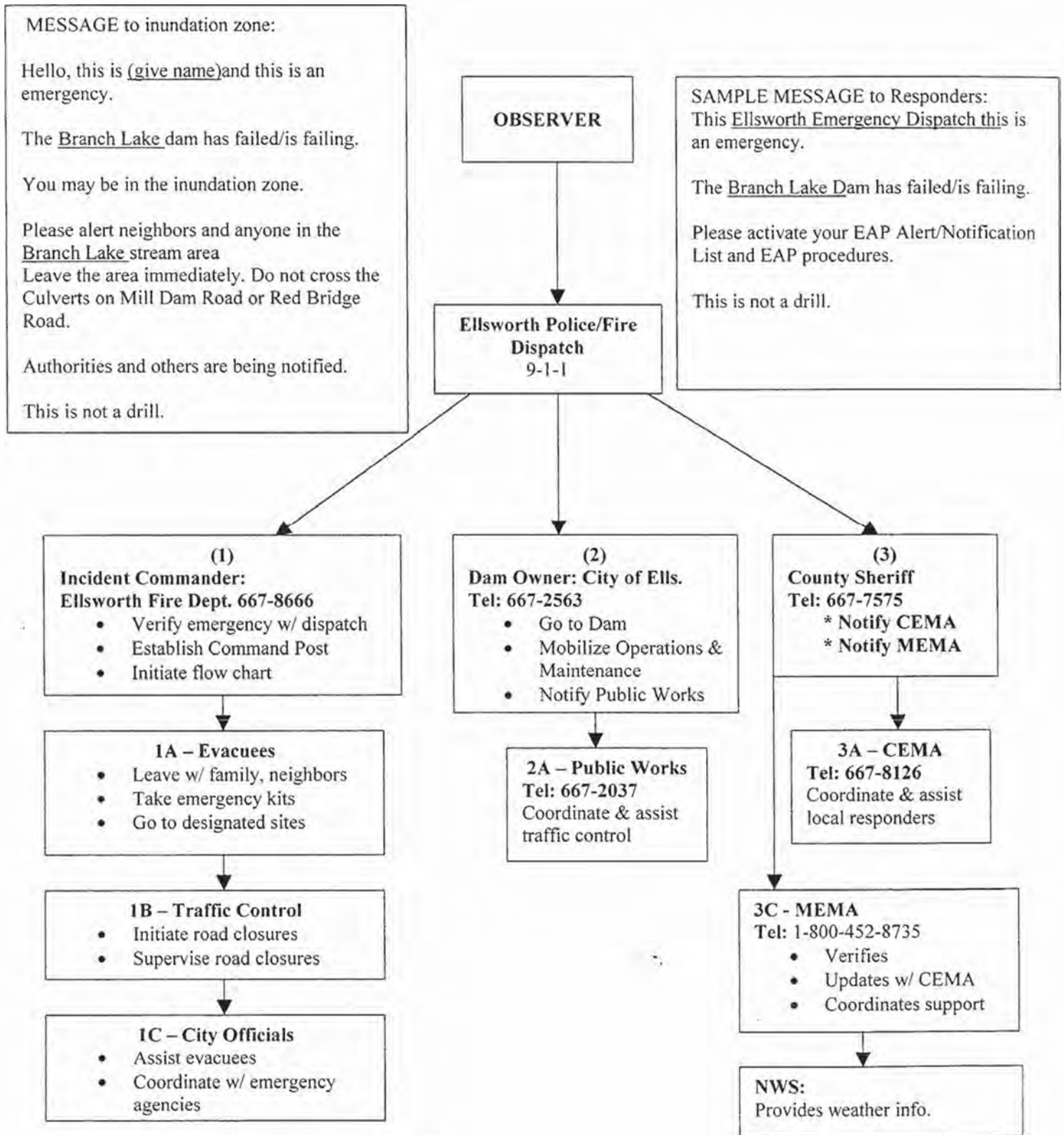
EXAMPLE TABLE OF CONTENTS:

PART:		PAGE:
	Title Page /Cover Sheet	1
	Table of Contents	2
I	Notification Flowchart	3
II	Statement of Purpose, Distribution	4
III	Project Description	5
IV	Emergency Conditions	6
V	Responsibilities	7
Tab A	Inundation Maps	8
Tab B	Appendices	9

1. Investigation and analysis of dam break floods
2. Plan for E.A.P. training, updating posting
3. Site-specific concerns
4. E.A.P. Approval Authentication

Emergency Action Plan
For Non Federal Maine Dams

Part I) Branch Lake Dam Emergency Action Plan



Legend: 1,2, etc = Priority of Call
CEMA = County Emergency Management Agency
MEMA = Maine Emergency Management Agency
NWS = National Weather Service

Last printed 5/13/03 10:51 AM

City of Ellsworth
Non Federal Dam Emergency Action Plan

PART 11 Branch Lake Dam Emergency Action Plan

1. Purpose.

The sudden release of water stored behind the Branch Lake Dam may present a potential hazard to downstream inhabitants and property. To minimize the chances for loss of life and damage to property, it is important to respond quickly to a potentially hazardous situation and to provide a coordinated effort that clearly assigns major areas of responsibility.

The first few minutes of time following the observance or realization of an actual or impending failure often make the difference between disjointed and ineffective actions and a coordinated and effective response.

This plan is intended to outline a coordinated and effective emergency response. It is essential that the proper organizations and agencies be notified on a timely basis so that properly trained people can perform the functions they are qualified to do. Local responders have been involved in the development of this plan, and it is exercised periodically.

2. Distribution.

a. The Notification Flowchart will be prominently posted at the dam site nearest public access to facilitate use by observers equipped with cellular telephones or radios.

b. The Notification Flowchart will be prominently posted within the first downstream inhabited structure or facility equipped with a telephone, and in the following other locations, Ellsworth Fire and Police Dispatch.

c. Dam owners / operators should keep a copy of the Notification Flowchart with them at all times.

d. This Emergency Action Plan will be distributed to each of the following persons or agencies as a minimum: (You must add others if appropriate).

- 1. City of Ellsworth.**
- 2. Ellsworth Water Department.**
- 3. Ellsworth Fire Department.**
- 4. Ellsworth Police Department**
- 5. P.P.L. of Maine**
- 6. Hancock County Sheriff Department.**
- 7. Hancock County Emergency Management Agency.**
- 8. Maine Emergency Management Agency.**
- 9. Branch Pond Camp Owners Association.**

City of Ellsworth
Non Federal Dam Emergency Action Plan

PART III Branch Lake Dam E.A.P.

The Branch Lake dam is located on Branch Lake Stream approximately **five** miles upstream from Leonard's Lake and 0 miles downstream from Branch Lake, and is located in the City of Ellsworth in Hancock County, Maine.

There are **no** significant dams upstream from Branch Lake Dam. A downstream dam known as the Ellsworth Dam is located on the Union River near downtown Ellsworth. This dam is owned by PPL, Maine. Areas of The City of Ellsworth could be potentially affected by failure or flooding, as the result of large releases from this dam.

Figure 1 is a location plan of the dam. The dam was re-built in 2001. The engineering firm of Woodward and Curran of Bangor, Me. was the designer of the dam. The dam consists of a concrete and earth structure with a four-gate spillway. It is 294 feet long and 17 feet high. The last significant maintenance work was done in 2001 and consisted of a major rebuild. Tony Fletcher of Maine Emergency Management last inspected this dam in May 2000.

The impoundment has a total surface area of 2703 acres and maximum storage of 18,100 acre-feet. The watershed contributing to this dam is characterized by wooded, hilly terrain, with little commercial development, and typical rural residential development. Soils are normally well drained in this area.

City of Ellsworth
Non Federal Dam Emergency Action Plan

PART IV Branch Lake Dam E.A.P.

1. The following plan outline contains suggested standard terminology for reporting, and action. These are highlighted in *italicized bold print*. These must be addressed to ensure rapid and appropriate response to emergency conditions. This part defines what these conditions are and specifies certain actions and responsibilities, and identifies who accomplishes them.

a. Monitoring / Maintenance

1. Normal conditions:

Normally applicable during periods of dry weather and occasional light rainfall. *Branch Lake Dam will be checked annually*) using the attached checklist to verify that structural and mechanical elements are in working condition and present no abnormalities or hindrances to safe operation. *The superintendent of the Ellsworth Water Department and the Ellsworth Emergency Management Director will perform these inspections. The Branch Pond Camp owners Assoc. monitor the water levels.*

2. Adverse conditions:

Normally applicable during periods of heavy or extended rainfall, flash flood warnings, and heavy snow load melt. *Inspection / surveillance frequency is increased to an as needed basis, depending on the severity of the adverse weather conditions. The Ellsworth Water Department Superintendent and/or the Ellsworth Emergency Management Director will perform these inspections.*

Example Action:
Water level is over normal limit;

Example Responsibility
Spillway gates to be opened as needed.

b. Response

1. *Standby Alert.* This level of surveillance is generated by specific observed or reported onsite conditions such as depth of spillway flows, cracking, seepage, etc. Primary and backup communications means should be employed at the site.

Action:

Responsibility:

1. Observation / Surveillance

Visitors in area, and inspectors.

2. Notify authorities:

Name, address, telephone no

Check when notified:

___ *Local Dispatcher (Police, Fire)*

9-1-1

___ *County Sheriff*

9-1-1

City of Ellsworth
Non Federal Dam Emergency Action Plan

Alert Sample Message: Hello, this is (Callers Name) I am advising you that we are starting constant surveillance of the Branch Lake Dam according to the Emergency Action Plan. We are notifying you (Agency) of this condition, and will inform you when a decision to activate the notification and evacuation process or cancel the surveillance is made.

(Example) Action:

(Example) Responsible:

3. Prepare to notify downstream residents, and obtain barricades to block vehicle and pedestrian traffic where Branch Lake Stream crosses Mill Dam Road, and Red Bridge Road. Monitor Branch Lake Stream water level at Christian Ridge Road.

Ellsworth Water Dept.
Supt. and local E.M.A.
Director.
677-2133

4. Provide periodic updates to authorities.

Site Observer

2. *Notify / evacuate.* This action is taken when failure is imminent or has occurred.

Action:

Responsibility

1. Activate Part I (Notification Flowchart)

Ellsworth Police/Fire Dispatch

2. Move people and equipment immediately downstream out of harms way.

Site Observer

3. Assume Command of Incident.

Incident Commander

4. Execute evacuation order, render assistance, account for missing persons, open shelters.

Incident Commander

5. Report Site conditions.

Site Observer

3. Recover. Recovery begins when danger of high water has passed.

1. Clear routes of debris

Public Works

2. Reestablish utilities / services

IC, Utilities, Public Works

3. Assess damage

Public works, EMA Dir.

4. Notify county EMA office of assessments.

Public works, Local EMA

5. Terminate event.

Incident Commander.

City of Ellsworth
Non Federal Dam Emergency Action Plan

PART V Responsibilities: Branch Lake Dam E.A.P.

1. Dam owner / Emergency Action Plan coordinator responsibilities.

The dam owner / E.A.P. coordinator is: City of Ellsworth
C/O City Manager
P. O. Box 586 Ellsworth, Maine 04605
207-667-2563

- a. **(Planning)** Develop, maintain, post and distribute the Emergency Action Plan. Designate a **primary observer** if dam is located remotely. Coordinate for **primary dispatch and responder** support for inundation zone alerting, warning and evacuation.
- b. **(Training)** Conduct annual communication checks to determine that the Notification Flowchart contacts are correct. Conduct periodic public awareness workshops to heighten awareness of the dam, its value and potential hazard to the downstream community.
- c. **(Engineering)** Develop and maintain inundation zone maps. Ensure that inundation zone residents or communities are aware of their evacuation procedures in the event of a dam failure.
- d. **(Maintenance)** Ensure that the dam is inspected and maintained to protect against deterioration and failure.
- e. **(Responding)** Respond to reported conditions at the dam, specify actions to take, and who will take them.

2. Observer / Operator responsibilities.

The primary observer / operator is: The Superintendent of The Ellsworth Water Department
P.O. Box 586
1 City Hall Plaza
Ellsworth, Maine 04605
207-667-2563

- a. Alert dam owner to adverse conditions or failure conditions at the dam.
- b. Activate the Notification Flowchart if conditions warrant.
- c. Alert people in the immediate downstream area of the dam of adverse conditions or imminent failure conditions.
- d. Keep owner / authorities informed of developing conditions.

City of Ellsworth
Non Federal Dam Emergency Action Plan

3. Emergency Official / Responder responsibilities.

The primary emergency responder is: Ellsworth Fire Department
1 City Hall Plaza Ellsworth, Maine 04605
Call 9-1-1

- a. Inundation zone emergency officials or responders are responsible for evacuating the Inundation zone when the Notification Flowchart is activated. The senior immediate downstream community on duty responder is the incident commander in the absence of other procedures.
- b. Participate in planning or training or coordination required developing and maintaining this plan.
- c. Be familiar with any special needs populations within the inundation zone, and coordinate for evacuation support ahead of time.
- d. The incident commander is responsible for verifying that the hazard has passed, and terminating the event, including evacuation procedures.

4. Inundation Zone resident, visitor, lake and stream user responsibilities.

- a. Become familiar with the Evacuation procedures best suited for your location in the event of a dam failure.
- b. Be observant of stream conditions that may indicate an emergency situation.
- c. Assist your neighbors in reacting / evacuating.
- d. Participate in or support dam safety workshops in your area.

City of Ellsworth
Non Federal Dam Emergency Action Plan

VI: Investigation of Inundation Scenario.

Failure Scenario # 1:

This scenario would most likely occur because of a large rainfall event or extremely large and rapid snow pack melt.

The cause for concern would be a large influx of water to Branch Lake that would require all four control gates to be opened to their maximum. This action over a long period of time could cause some erosion immediately below the dam, and could possibly undermine the roadway culverts located on Mill Dam Road just below the dam.

TAB A (Inundation Maps) Branch Lake Dam E.A.P.

- 1. The normal response to the above scenario is monitor the stream depth as it passes Mill Dam Road. In the event erosion is occurring at this location the roadway shall be barricaded on both sides of the stream to prevent vehicle and pedestrian traffic from entering the danger area. Following the high water event the roadway shall be repaired and placed back in service.**
- 2. The down stream situation shall be monitored to ensure the water level is not having an adverse effect at the culvert on Red Bridge Road. Should erosion start to occur at this location the road shall be barricaded on both sides of the stream to prevent the passage of vehicles and pedestrians.**
- 3. All residences located in the inundation zone shall be notified of a possible high water situation.**

Failure Scenario # 2.

This scenario would be a dam failure is eminent or has failed with normal water level conditions.

The cause for concern would be the sudden release of the water being retained by the dam that is normally eight feet of water in the lake.

Emergency response actions will be as follows:

- 1. Initiate and complete the call out sequence as outlined earlier in this plan.**
- 2. All residences in the inundation zone shall be notified of the situation and advised to evacuate if necessary. The residence shall include the homes near the area where Branch Lake Stream crosses Red Bridge Road, and Christian Ridge Road.**
- 3. In stall barricades on both sides of the stream on Mill Dam Road, Red Bridge Road, and Christian Ridge Road so as to prevent entry by vehicles and pedestrians. Emergency response personnel to ensure no entry requirements are maintained shall monitor these barricade areas.**
- 4. Follow standard operating procedures to evaluate, prioritize and repair any damage that occurs.**

Failure Scenario # 3.

This scenario would be an eminent or actual dam failure with full flood conditions.

The cause for concern would be the increased water flow at full flood conditions should the dam fail and add the increased flow of the eight feet of water being retained by the dam in Branch Lake.

Emergency Response will be as follows:

- 1) Initiate and complete the call out sequence as outlined earlier in this plan.**
- 2) Follow the procedures as outlined in dam failure scenario # 2.**

Branch Lake Dam
Non Federal Dam Emergency Action Plan

TAB B (Appendices) Branch Lake Dam E.A.P.

1. This plan shall be exercised at least once a year to ensure all involved parties are familiar with this E.A.P.
2. This plan shall have an actual drill at least every five years.
3. The plan shall be reviewed every year following the exercise or drill to make any necessary adjustments or corrections in the plan for deficiencies noted during the training.
4. A copy of this plan shall be kept in the City of Ellsworth municipal office, dispatch center, fire and police departments, Hancock County EMA and MEMA. Additional copies shall be made available to the officers of the Branch Lake Camp owners Association, residents located in the inundation area, and any other interested parties or individuals who may request the plan.

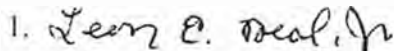


-Training plans and schedules.

-Exercising, Drills, Testing, follow up (Annual Exercise required)

-Updating, annual reviews, lessons learned, posting & distribution

- d. Approval of the E.A.P.

Ellsworth City Council Members:

1. 
2. 
3. 
4. 

5.

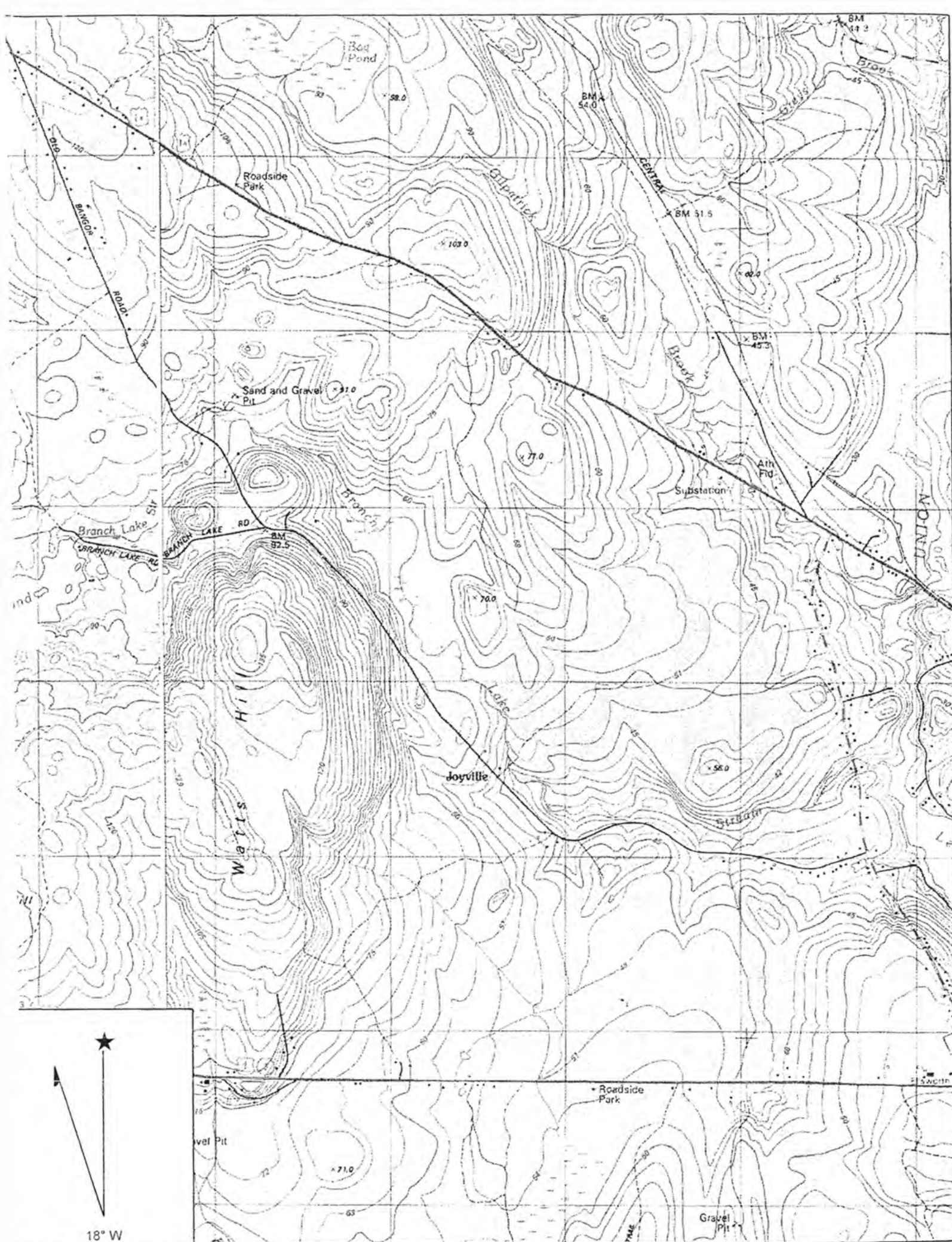
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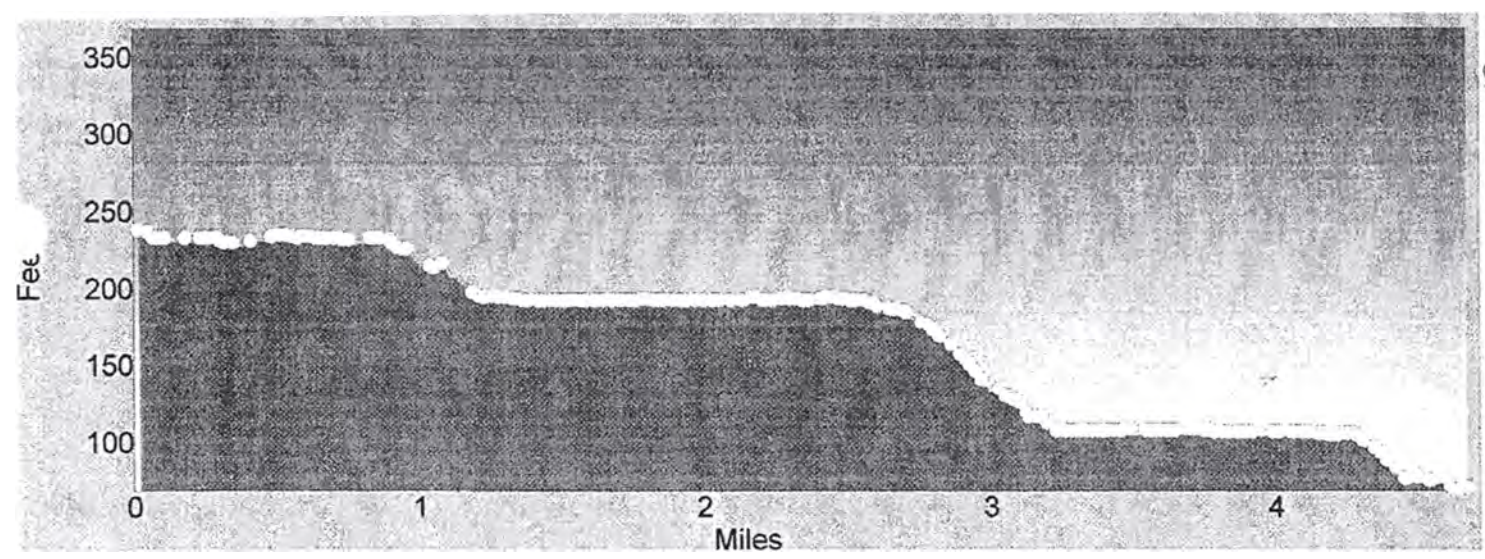
-Reviewed and approved by the Maine Emergency Management Agency.

Per:

Date:



18° W

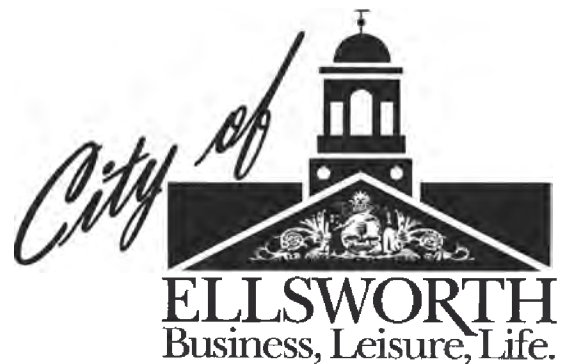


Total distance:	4 miles, 3500 feet	Climbing:	41 feet	Latitude:	000° 00' 00.0" N
		Descending:	-208 feet	Longitude:	000° 00' 00.0" E
Ground distance:	4 miles, 3504 feet	Elevation change:	-167 feet	Elevation:	
		Min/Max:	69/237	Grade:	

City of Ellsworth Ordinances
Chapter 53

Water Ordinance

Expired



City of Ellsworth

Chapter [54] DEVELOPMENT FEE ORDINANCE

Section 1. TITLE

This ordinance shall be known and cited as the “Development Fee Ordinance” of the City of Ellsworth, Maine.

Section 2. AUTHORITY

This ordinance is adopted pursuant to Title 30A M.R.S.A. §4354, and its statutory and constitutional home rule provisions.

Section 3. PURPOSE

The purpose of the Development Fee Ordinance is to ensure the health, safety, and welfare of the residents of the City of Ellsworth by:

- A. Requiring development to pay for its proportionate share of costs associated with new, expanded, or modified infrastructure necessary to service the development, as described in the specific Infrastructure Financing Plan; and
- B. Setting forth standards and procedures for assessing development fees and administering the Development Fee Program.

Section 4. EFFECTIVE DATE

This ordinance, enacted on the 20th day of June 2005 by the Ellsworth City Council, shall take effect immediately.

Section 5. RELATIONSHIP WITH OTHER ORDINANCES

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

Section 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.

Section 7. AMENDMENTS

Before consideration of adoption or amendment of the ordinance and of any Infrastructure Financing Plan, the City Council shall hold a public hearing. Said public hearing shall be published in a newspaper of general circulation in the municipality at least seven (7) days before the hearing.

Section 8. DEFINITIONS

Capital Facilities: Necessary public services that are permanent additions to the City's assets and are primarily financed by long-term debt instruments or a capital improvement plan but not primarily from the City's annual municipal operating budget. Capital facilities and infrastructure are terms that may be used interchangeably.

Construction Permit: Includes a building permit, plumbing permit, electrical permit, or any other land use permit or license issued by the Ellsworth Code Enforcement Officer.

Developer: A person, corporation, organization, or other legal entity constructing or creating development.

Development Fee: The charge imposed upon development by the City of Ellsworth to fund all or a portion of the public facilities capital improvements required by the development from which it is collected.

District: A designated area identified in an Infrastructure Financing Plan for which public facility needs have been determined upon assumptions made in accordance with generally accepted planning practices and engineering standards.

Infrastructure Financing Plan: The plan that sets out the need for public facility capital improvements, and proposed funding sources. The time period covered by the plan shall not be less than five (5) years or exceed ten (10) years.

Development: The construction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; extension or change of any existing use; or any of which increases the need for services.

Section 9. APPLICABILITY

This ordinance shall apply to all development within the City of Ellsworth at such time as a specific Infrastructure Financing Plan has been adopted pursuant to Section 10 of this ordinance.

Section 10. INFRASTRUCTURE FINANCING PLANS

Prior to assessment of a development fee, the City of Ellsworth shall adopt a specific Infrastructure Financing Plan. Each Infrastructure Financing Plan shall comply with the following requirements:

- A. The plan shall estimate the total cost of capital facilities needed to serve the anticipated future development of the identified district.

- B. The plan shall specify needs for one or more of the following categories of capital facilities:
 - i. Water facilities
 - ii. Solid waste facilities;
 - iii. Police and fire protection facilities and equipment;
 - iv. Roads and traffic control devices;
 - v. Public parks and other open space or recreation areas; and
 - vi. Public Schools.

- C. The following costs may be included in the capital cost of the infrastructure improvements: land or easement acquisition; studies leading to design; engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the construction of the improvement; the actual construction of the improvement including, without limitation, demolition costs, clearing and grading of the land, and necessary capital equipment; mitigation costs; legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project; debt service costs including interest if the City borrows for the construction of the improvement; relocation costs; and similar costs that are directly related to the project.

- D. No portion of the development fee shall be used for routine maintenance or operation activities.

Section 11. ADMINISTRATION OF DEVELOPMENT FEES

- A. This ordinance shall be administered by the Ellsworth Code Enforcement Officer.

- B. The development fees shall be assessed by the Code Enforcement Officer, as determined from the applicable Infrastructure Financing Plan.

- C. The Code Enforcement Officer may charge the developer a review fee, not to exceed \$500 per development per Infrastructure Financing Plan, to contract professional services to assist with development fee assessments.

- D. All development which increases the need for services shall pay a development fee. If the development consists of an expansion of an existing use or a change of use type, the fee shall be assessed only for the additional impact of the expansion or change.

E. The development fee shall be paid by the developer as follows:

1. If a construction permit is required, fifty (50) percent of the applicable development fees shall be paid at the time of the issuance of the permit and fifty (50) percent at the time of issuance of the Certificate of Occupancy or final inspection.
2. In the event no construction permit is needed for a development that increases the need for services, the developer is responsible to notify the Code Enforcement Officer of the development and to pay the development fee in whole.
3. The City of Ellsworth retains the right to collect unpaid development fees up to five (5) years after the substantial or total completion of the development. The unpaid development fees shall be paid together with interest, compounded annually, and calculated as simple interest at three (3) percent per year.
4. The City Council may approve the payment of a development fee over time in accordance with an approved payment schedule provided that the Council finds, by formal vote, that the payment of the development fee per sections 11.E.1 and 11.E.2 will create a financial hardship for the developer and appropriate arrangements are in place to guarantee the collection of the fee in a timely manner.

F. The City Council shall periodically review each specific Infrastructure Financing Plan established under this ordinance. If the City Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the City Council may adopt changes in the Plan. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid a development fee.

Section 12. DEVELOPMENT FEE ACCOUNTS

All development fees collected under the provisions of this ordinance shall be segregated and accounted for in separate development fee accounts designated for each specific Infrastructure Financing Plan.

Section 13. REFUND OF DEVELOPMENT FEES

Development fees shall be refunded in the following cases:

- A. Any fees collected that are not spent or obligated by contract for the specified improvements by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall be returned to the payer of the fee together with interest compounded annually calculated as simple interest at three (3) percent per year from the date of the payment of the fee.

- B. Any development fees actually paid that exceed the City's actual costs shall be returned to the current owner of the property for which the fee was paid together with interest calculated at three (3) percent per year from the date of the payment of the fee.

Section 14. MODIFICATION OF DEVELOPMENT FEES

- A. The City Council may, by formal vote following a public hearing, waive the payment of a required development fee, in whole or in part, if it finds that:
 - 1. The developer or property owner who would otherwise be responsible for the payment of the development fee voluntarily agrees to construct the improvement for which the development fee would be collected or an equivalent improvement approved by the City Council. The pre-funding of a capital projects shall be allowed; or
 - 2. The project subject to the development fee involves the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture Rural Development Agency, or the Maine State Housing Authority. If only part of the project is affordable housing, the Council may waive only the portion of the fee attributable to the affordable units; or
 - 3. The project subject to the development fee involves a non-retail use that will create a significant number of new jobs or investment that is consistent with the City's economic development objectives and will not result in an unfair competitive advantage for the project vis-à-vis other local businesses; or
 - 4. The project subject to the development fee will create significant public recreational amenities or create quality of life components that the City Council deems to be essential to the fulfillment of the City's adopted vision, as described in the 2004 Comprehensive Plan.

- B. A waiver decision by the City Council cannot be appealed.

Section 15. APPEAL

Any person aggrieved by a decision of the Ellsworth Code Enforcement Officer may appeal said decision to the Ellsworth City Council in writing within seven (7) days after said decision and provide the grounds for such appeal. The City Council may affirm, modify, or reverse the decision of the Code Enforcement Officer in accordance with the terms of this ordinance.

Section 16. PENALTY

Any person violating the provisions shall be liable to a civil penalty in accordance with 30A M.R.S.A. §4452.

**BECKWITH/TRIANGLE DEVELOPMENT DISTRICT
INFRASTRUCTURE FINANCING PLAN**

COUNCIL ORDER #060503 to adopt the Beckwith/Triangle Development District program and establish the Infrastructure Financing Plan which includes formulas for calculating associated development fees.

WHEREAS, the City of Ellsworth has adopted the Ellsworth Code of Ordinance Chapter 54; an ordinance on the assessment of development fees; and

WHEREAS, City staff has identified a list of capital improvements that will be necessary to support growth in the City;

NOW THEREFORE, BE IT ORDERED, that the City Council does hereby approve the Beckwith/Triangle Development District as delineated on the attached Beckwith/Triangle Development District map.

AND WHEREAS, the City staff has identified a list of capital improvements to that area that will be necessary to support growth in the development area; and

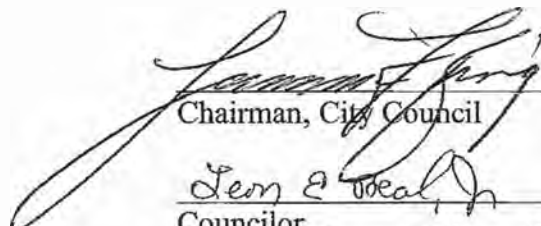
WHEREAS, the costs identified for these improvements has been projected using recognized and generally accepted standards, and with expert technical assistance; and

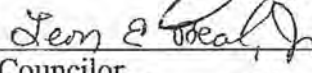
NOW THEREFORE, BE IT ORDERED, that the City Council does hereby approve the following list of capital improvements and associated assessment formulas for new and proposed development in the Beckwith/Triangle Development District, beginning at the bottom of Beckwith Hill:

1. Make Route 3 one way from the triangle to Myrick Street utilizing the existing two lane road.
2. Adjust the traffic light at the intersection of Route 3 and Myrick Street to accommodate the own-way change.
3. Add one lane on Myrick Street from Route 3 to Route 1 to allow two lanes of traffic to flow easterly.
4. Add one additional lane on Myrick Street at the Route 1 intersection to allow one right turn lane and two left turn lanes.
5. Add a traffic light on Myrick Street to ensure safety of the traffic entering and exiting the Home Depot parking lot.
6. Add a traffic light at the intersection of Myrick Street and Route 1.
7. Add a lane on Route 1 for approximately 1000 feet from Myrick Street northerly in order to merge traffic to one lane.
8. Change two lane traffic heading southeasterly on Route 1 from the triangle to one lane and use the second existing lane for a center turning lane.
9. Realign the triangle intersection for new directions and eliminate left hand turns out of the Maine Coast Mall.

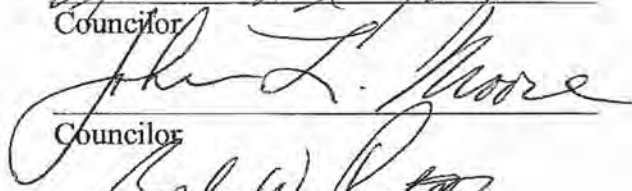
BE IT FURTHER ORDERED, that the development fee shall be \$461.86 per Saturday peak hour primary and diverted trip ends.

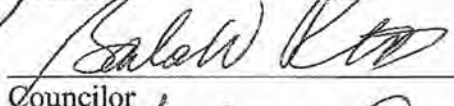
BE IT FURTHER ORDERED, that the fees collected are to be available to fund all costs associated with said improvements, including but not limited to construction, design, legal expenses, engineering, environmental and traffic studies, acquisition of rights of way etc.


Chairman, City Council


Councilor


Councilor


Councilor


Councilor


Councilor

Councilor

I certify that I am the duly qualified Clerk of the City of Ellsworth, Maine, and that the foregoing orders were adopted by the Councilors of the City at a meeting of said Councilors duly called and legally held in accordance with the laws of Maine on June 20, 2005, that the meeting was open to the public and that adequate and proper notice thereof was given in accordance with the laws of Maine, and that such votes have been entered into and become a part of the permanent records of the City and remain in full force and effect and have not been rescinded or amended.

City of Ellsworth


Clerk

(SEAL)

Dated at Ellsworth, Maine
Dated: June 20, 2005

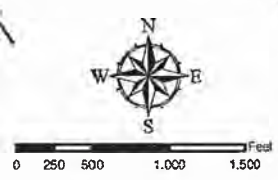
Development Fee Ordinance Infrastructure Financing Plan Beckwith/Triangle Development District Map

Approved by Heidi Noel Grindle Date 6/20/2005
Ellsworth City Clerk



Beckwith / Triangle Development District encompasses the following properties listed below by tax map and lot number, and any division thereof:

MAP	LOT	SUBD	TYPE	MAP	LOT	SUBD	TYPE	MAP	LOT	SUBD	TYPE	MAP	LOT	SUBD	TYPE
011	001	000	000	016	026	000	000	016	063	000	000	128	006	000	000
011	002	000	000	016	027	000	000	016	064	000	000	128	007	000	000
011	003	000	000	016	028	000	000	016	065	000	000	128	008	000	000
011	003	001	000	016	029	000	000	016	065	001	000	128	009	000	000
011	004	000	000	016	030	000	000	016	067	000	000	128	010	000	000
011	005	000	000	016	031	000	000	016	069	000	000	128	013	000	000
011	006	000	000	016	032	000	000	016	070	000	000	128	014	000	000
011	007	000	000	016	033	000	000	016	071	000	000	128	014	001	000
011	008	000	000	016	034	000	000	016	071	001	000	128	015	000	000
015	057	000	000	016	035	000	000	016	072	000	000	128	016	000	000
015	058	000	000	016	036	000	000	016	073	000	000	128	017	000	000
016	001	000	000	016	037	000	000	016	074	000	000	128	018	000	000
016	002	000	000	016	038	000	000	016	075	000	000	128	019	000	000
016	003	000	000	016	039	000	000	016	076	000	000	128	020	000	000
016	003	001	000	016	040	000	000	022	001	000	000	128	020	001	000
016	004	000	000	016	041	000	000	022	003	000	000	128	021	000	000
016	005	000	000	016	042	000	000	022	003	001	000	128	022	000	000
016	006	000	000	016	043	000	000	022	004	000	000	128	023	000	000
016	007	000	000	016	044	000	000	022	005	000	000	129	008	000	000
016	007	001	000	016	045	000	000	022	005	001	000	129	009	000	000
016	008	000	000	016	047	000	000	022	005	002	000	129	010	000	000
016	008	001	000	016	047	001	000	022	005	003	000	129	011	000	000
016	008	001	001	016	047	002	000	022	005	004	000	129	012	000	000
016	009	000	000	016	047	004	000	022	005	005	000	129	013	000	000
016	010	000	000	016	047	007	000	022	008	000	000	129	013	001	000
016	011	000	000	016	047	001	000	022	009	000	000	129	014	000	000
016	012	000	000	016	048	000	000	022	010	000	000	129	015	000	000
016	013	000	000	016	053	000	000	022	011	000	000	129	016	000	000
014	000	000	000	016	054	000	000	022	011	001	000	129	017	000	000
016	000	000	000	016	055	000	000	022	012	000	000	131	001	000	000
017	000	000	000	016	056	000	000	022	013	000	000	131	052	000	000
018	018	000	000	016	057	000	000	128	001	000	000	131	054	000	000
016	020	000	000	016	059	000	000	128	001	001	000	131	055	000	000
016	022	000	000	016	060	000	000	128	002	000	000	131	056	000	000
016	023	000	000	016	061	000	000	128	003	000	000	131	058	000	000
016	024	000	000	016	062	000	000	128	004	000	000	131	070	000	000
016	025	000	000	016	062	001	000	128	005	000	000				



Produced By
City of Ellsworth
Assessing Office



**City of Ellsworth
Chapter 55**

**Water Supply Protection
Ordinance**

A true copy –

Attest: Heidi-Noel Grindle

City Clerk



*Adopted July 18, 2005
Effective August 11, 2005
Amended Through March 15, 2010
Amended August 16, 2010
Amended January 14, 2013*

ARTICLE I. GENERAL PROVISIONS

Section 1. Title

This Ordinance shall be known and cited as the “Public Water Supply Protection Ordinance” of the City of Ellsworth, Maine.

Section 2. Authority

This ordinance is adopted pursuant to Title 22 M.R.S.A. §2642.

Section 3. Purpose and Intent

The purpose of this ordinance is to protect the water quality of Branch Lake, the Ellsworth drinking water supply and its sources, as well as the health, safety, and welfare of persons dependent upon such supplies. These supply sources include all perennial and intermittent streams, as well as the wetlands of ten (10) acres or more located within the Branch Lake Watershed Boundaries. The ordinance is intended to protect the drinking water supply and its sources from pollution and development; chemical contamination; increased recreational and boating pressures; and invasive aquatic species.

The provisions of this ordinance pertaining to surface water use and water-related activities include any activity in, on, or from the surface water or the frozen water of Branch Lake and its sources.

Section 4. Effective Date

This ordinance enacted on the 18th day of July 2005 by the Ellsworth City Council shall take effect August 15, 2005.

Section 5. Applicability and Map

This ordinance shall apply to all surface water use on Branch Lake or its sources, as delineated on the attached Public Water Supply Protection Area map. This area is considered to be essential to the protection of the existing water from the effect of possible contamination activities.

Section 6. Relationship with other Ordinances

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

Section 7. Validity and Severability

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

Section 8. Amendments

A. Initiation of Amendments

A proposal for an amendment to this ordinance may be initiated by one of the following:

1. Planning Board;
2. City Council;
3. City Manager;
4. Water Department Superintendent;
5. Ellsworth Water Supply Commission; or

6. An individual, through the petition process described in the Charter of the City of Ellsworth, Article IX, as amended on November 4, 1997.

B. Procedure for Amendments

1. Upon receipt of a proposed amendment, the City Planner shall take all action necessary to schedule a public hearing to be conducted by the Planning Board on the request;

2. The Planning Board shall hold a public hearing within forty-five (45) days of receipt of a proposed amendment or repeal by the City Planner. At least thirteen (13) days before the hearing, the City shall advertise the date, time, place, and purpose of the Planning Board hearing in a newspaper of general circulation;

3. The Planning Board shall make its official report at the next meeting of the Ellsworth City Council, which is held at least ten (10) days after the public hearing; and

4. Before consideration of the proposed amendment or repeal by the Ellsworth City Council, it shall hold a public hearing. Said public hearing shall be published at least two (2) times in a newspaper having general circulation in the municipality, the date of the first publication must be at least seven (7) days before the hearing, and shall be posted in the municipal office at least fourteen (14) days before the public hearing.

Section 9. Enforcement

Any duly designated Ellsworth Police Officer, the Water Department Superintendent, their designees, and the Branch Lake Steward are authorized and shall have the authority to enforce all provisions of this ordinance, including the authority to deny or revoke, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag.

Only the Branch Lake Steward, the Water Department Superintendent or designees are authorized to waive the inspection of a resident boat.

Ellsworth Boat Inspectors are authorized to issue, or deny, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag to any boater.

Section 10. Appeal

Any person aggrieved by a decision of an Ellsworth Police Officer, the Branch Lake Steward, the Water Superintendent or designees, or an Ellsworth Boat Inspector may appeal said decision to the Ellsworth Board of Appeals within seven (7) days after said decision. The Board of Appeals may affirm, modify, or reverse the decision in accordance with the terms of this ordinance.

Section 11. Civil Penalty

Any person violating the provisions of this ordinance shall be liable to a civil penalty in accordance with 30-A M.R.S.A. §4452 as summarized below:

A) Monetary penalties may be assessed on a per-day basis.

1. The minimum penalty for a specific violation is \$100;

2. The maximum penalty outside a resource protection zone is \$2,500;

3. The maximum penalty is \$5,000 for any violation within a resource protection zone;
4. The maximum penalty is increased to \$25,000 when it is shown that there has been a previous conviction of the same party within the past 2 years for a similar violation.
5. The maximum penalty may be increased if the economic benefit resulting from the violation exceeds the applicable penalties

B) In addition to penalties, legal fees may also be awarded as provided by court rule.

C) The violator may be ordered to correct, abate or mitigate the violations.

D) In setting a penalty, the following shall be considered:

1. Prior violations by the same party;
2. The degree of environmental damage that cannot be abated or corrected;
3. The extent to which the violation continued following an order to stop.

Section 12. Revenues

All revenues generated from this ordinance, including assessed penalties, shall only be used to support the administration of this ordinance and related programs to protect Ellsworth's public water supply, Branch Lake.

Section 13. Definitions

AEROPLANE: An airplane that can land on or take off from water or ice.

ALL-TERRAIN VEHICLE or ATV: Any recreation vehicle with three (3) or more wheels and weighing under Fifteen hundred (1500) pounds.

AMPHIBIOUS AEROPLANE: An airplane that can take off and land using conventional runways and water.

AMPHIBIOUS VEHICLE: Any vehicle that can be used over land and water.

ARSENIC-TREATED WOOD PRODUCTS: Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds.

AQUATIC PLANTS: As defined by Title 12 MRSa sec. 13001, a plant species that requires a permanently flooded freshwater habitat.

DOCK: Floating or fixed structure located in, on, or over the waters of Branch Lake.

BOAT INSPECTION: The inspection of boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants are introduced in Branch Lake and in its sources.

BOAT: Any device capable of carrying one or more person in, on, or over the waters of Branch Lake. It does not include air mattresses, inner tubes, and beach and water toys.

BOAT LAUNCH: A facility designed primarily for the launching and landing of watercraft.

CREOSOTE-TREATED WOOD : Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been treated with creosote.

FLOAT PLANE BASE: On-water location designed for docking, mooring, or servicing three or more aeroplanes simultaneously.

FUEL DEPOT: Waterside fueling facility containing fuel storage in excess of 50 gallons.

INFESTED WATER BODIES: Lakes, Ponds, Rivers, or Streams known or suspected to contain invasive aquatic plants. For the purposes of this ordinance, all water bodies beyond the borders of the state of Maine will be suspected to contain invasive aquatic plants. Known Maine infested water bodies are those listed in the most recent annual Maine Department of Environmental Protection (ME DEP) update.

INVASIVE AQUATIC PLANTS: As defined by Title 38 MRSA Chapter 3, Subchapter 1, Section 410-N, a species identified by the ME DEP as an invasive aquatic plant, or one of the following species:

- (1) Eurasian water milfoil, *Myriophyllum spicatum*;
- (2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*;
- (3) Parrot feather, *Myriophyllum aquaticum*;
- (4) Water chestnut, *Trapa natans*;
- (5) Hydrilla, *Hydrilla verticillata*;
- (6) Fanwort, *Cabomba caroliniana*;
- (7) Curly pondweed, *Potamogeton crispus*;
- (8) European naiad, *Najas minor*;
- (9) Brazilian elodea, *Egeria densa*;
- (10) Frogbit, *Hydrocharis morsus-ranae*; and
- (11) Yellow floating heart, *Nymphoides peltata*.

MOORING: Appliance used by a boat for anchoring purposes that is not carried aboard such boat when underway as regular equipment.

MOTORBIKE: Any self-propelled two (2) wheeled motorcycle or motor-driven cycle designed for or capable of traveling off developed roadways and highways.

MOTOR VEHICLES: A self-propelled wheeled conveyance, such as a car or truck.

NORMAL HIGH-WATER LINE: The line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland.

NO WAKE SPEED: Operation of a boat at the slowest possible speed to maintain steerage.

PERSONAL WATERCRAFT (PWC): A small, lightweight water jet propelled craft designed to be either sat-on or stood-on with motorcycle-like handlebars and squeeze throttle.

RESIDENT BOAT: Boat(s)/watercraft(s) belonging to a household owning property or right-of-way abutting Branch Lake.

SNOWMOBILE: Any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, that is steered by tracks, skis, or runners.

SUBSTANTIAL IMPROVEMENTS: Any reconstruction, rehabilitation or other improvement of a launch, dock, or other structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

WATERCRAFT: Any boat or other floating device of rigid or inflatable construction which is designated to carry people or cargo on the water, and which is propelled by machinery, oars, paddles or wind action on a sail; except: inner tubes, other floatable material not propelled by machinery, personal floating devices worn or held in hand, and other objects such as floating or swimming aids, including float tubes.

ARTICLE II. SURFACE WATER USE REGULATIONS

Section 1. Establishment of Zones

The Water Supply Protection Ordinance applies to three (3) zones depicted on the official City of Ellsworth Water Supply Protection Area map.

A. Intake Zone

This 280,000 square feet rectangular zone encompasses the area of water around the Ellsworth public water supply point of intake in Branch Lake commencing at the northwest corner of the Ellsworth tax map 55 lot 14 at the normal high-water line of Branch Lake and extending one hundred and twenty-four (124) feet in a generally northwesterly direction along the shoreline; thence at a right angle in a northeasterly direction seven hundred (700) feet to a point; thence at a right angle in a southeasterly direction four hundred (400) feet to a point; thence at a right angle in a southwesterly direction seven hundred (700) feet to a point; thence at a right angle in a northwesterly

direction two hundred and seventy-six (276) feet along the shoreline to the point of beginning.

B. Recreation Zone

This zone encompasses all of the water surface of Branch Lake and its sources excluding the Intake Zone area (as depicted on the Ellsworth Public Water Supply Protection map - Attachment A).

C. Aeroplane Landing & Takeoff Zone

This zone, located within the recreation zone listed in B above, encompasses waters in the “Upper Lake” section of Branch Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet North of so-called “Little John Island” as depicted on the Ellsworth Public Water Supply Protection map - Attachment A.

Section 2. Restrictions

A. Intake Zone

1. All water-related activities in this area are prohibited; no trespassing is allowed.
2. The Ellsworth Water Department shall have authority to place, at its discretion, signs and/or buoys in the lake delineating the zone and indicating the penalties to be imposed for trespassing.

B. Recreational Zone

Protection measures for the Recreation Zone are:

1. **No Wake.** It shall be unlawful to operate any boat at speeds faster than no wake speed within 200 feet of the shoreline.
2. **Motor Vehicles.** Motor vehicles are prohibited unless used for the express purpose of launching a boat.
3. **ATVs.** ATVs are prohibited unless used on the ice or used to launch a boat.
4. **Motorbikes.** Motorbikes are prohibited unless used on the ice or used to launch a boat.
5. **Snowmobiles.** Snowmobiles are allowed on the ice of Branch Lake.
6. **Amphibious Vehicles.** Amphibious vehicles are prohibited, including amphibious aeroplanes.
7. **Aeroplanes.** No person shall cause or permit any aeroplanes to land, operate, or take off except under conditions outlined in Section 6 below.
8. **Diesel Engines.** All vessels with diesel engines are prohibited.
9. **House Boats.** No vessel fitted for use as a dwelling or residence or occupied as such shall be permitted.
10. **Engine Repairs.** Servicing or repair of engines is prohibited.
11. **Dumping of Wastes.** No person shall dump, cause to dump, or discard

feces, ashes, food wastes, offal, or any waste or refuse.

12. Ice Shacks and On-ice Activities: See Section 5 below.

13. Overnight stay. Overnight stays on the ice are prohibited.

14. Moorings. All mooring gear must be free of aquatic plants before being placed in Branch Lake or its sources.

15. Fishing Equipment. All fishing equipment must be free of aquatic plants before being placed in Branch Lake or its sources.

C. Aeroplane Landing and Takeoff Zone

Protection measures for the Aeroplane Landing & Takeoff Zone are:

1. Aeroplanes. No person shall cause or permit any aeroplanes to land, operate, or take off except under conditions outlined in Section 6 below.

2. No Wake. It shall be unlawful to operate any aeroplane at speeds faster than no wake speed within 200 feet of the mainland or island shoreline.

Section 3. Protection of Water Supply Generally

A. It shall be unlawful for any person to pollute, threaten, jeopardize or render impure, turbid or offensive the waters of Branch Lake or its sources.

B. No person shall put filth, sewage, ashes, animal or vegetable matter, wood chips, compost, construction debris, herbicide, wood shavings or any other substance or pollutant, whether solid or liquid in the waters of Branch Lake or its sources.

C. The owner or operator of a motorized vehicle or aeroplane that sinks beneath the water or ice of Branch Lake or its sources must contact the Ellsworth Water or Police Department(s) as soon as safety permits.

Section 4. Boat Launches and Docks

A. All new boat launches, docks, and other structures in, on, or over the waters of Branch Lake are prohibited with the exception of docks used for residential purposes and those structures listed under Section 4-E.

B. Boat launches, docks, and other structures in place before the effective date of this ordinance may continue unless the use is discontinued for a period of 12 consecutive months.

C. All new docks and other structures in, on, or over the waters of Branch Lake must meet the following specifications and restrictions:

1. The structure shall be built no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area;

2. Habitable or enclosed structures are prohibited;

3. The use of metal drums is prohibited;

4. The use of any flotation devices that will sink when punctured are

- prohibited;
5. The use of creosote- and arsenic-treated wood products are prohibited;
 6. The use of drums, barrels or containers of any type that have been previously used to store oil, petroleum products or hazardous materials of any type are prohibited;
 7. Toilet facilities on boat docks are prohibited; and
 8. Boat docks shall be free of any invasive aquatic plant before being placed in Branch Lake or its sources.
- D.** A dock or other structure in place in, on, or over the waters of Branch Lake before the effective date of this ordinance must meet the specifications and restrictions set forth in Section 4.C of this ordinance if substantial improvements take place.
- E.** Boat launches, docks, and other structures in, on, or over the waters of Branch Lake erected on City-owned or State owned property are allowed.
- F.** No structures in, on, or over the waters of Branch Lake shall be used for building, constructing or repairing of any boat or aeroplane.

Section 5. Ice Shacks and On-ice Activities

- A.** Ice shacks and other similar structures providing temporary protection are allowed. Ellsworth Water Department or other applicable City Enforcement staff may inspect temporary structures on Branch Lake at any time for conformance with this ordinance.
- B.** Disposal or abandonment of bottles, cans, ash, trash, human waste, pet waste, building materials or equipment on the ice or in the water is prohibited. Anything brought on the ice must be packed out.
- C.** Defecating and/or urinating on the ice or in the water is prohibited. Please make provision for these basic needs beforehand.
- D.** Burning of trash on the ice is prohibited.

Section 6. Aeroplane Use

- A.** Before a pilot operates an aeroplane on Branch Lake, the pilot must be certified as an “Aeroplane Self-inspector” by the City of Ellsworth as outlined in Article IV-B, Aeroplane Inspection.
- B.** The authorized aeroplane landing and take-off zone on Branch Lake is in the basin depicted as the Upper Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet north of so-called “Little John Island” as depicted on the Ellsworth Public Water Supply Protection map - Attachment A. Because of the drinking water intake in the Lower Lake, only the taxiing of aeroplanes in the Lower Lake (southeast of the peninsulas) is allowed.
- C.** Aeroplane fly-in events are prohibited.
- D.** A 500 feet minimum altitude shall be maintained when not landing or taking off.
- E.** Self-inspection of an aeroplane, and therefore direct landing in Branch Lake, is prohibited if in the last twelve (12) months the aeroplane has been in an infested water

body as defined in Art. 1, Sec. 13. If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City of Ellsworth Water Department, and schedule an inspection conducted by the Water Department Superintendent, Branch Lake Steward or any duly designated Ellsworth Police Officer for a City performed Inspection.

F. No aeroplanes shall operate on Branch Lake in conjunction with any business enterprise, including but not limited to flight training schools, guiding operations, tour operations, resorts or housing developments, whether or not such enterprises are located in the Branch Lake watershed. No fuel depots or floatplane bases shall be operated on Branch Lake.

G. The owner or operator of an aeroplane that sinks beneath the water or ice or crashes onto the water or ice of Branch Lake or its sources must contact the Ellsworth Water or Police Department as soon as safety permits.

ARTICLE III. BOAT INSPECTION

Section 1. Tag, Inspection, Permit (TIP)

Launching of any watercraft in Branch Lake is prohibited unless: 1) the boat has a valid TAG (sticker), 2) an INSPECTION was conducted, and 3) a PERMIT has been issued.

A. TAG

1. A Boat Tag consists of a City-supplied sticker applied to the left bow of the boat in plain view above the waterline.
2. Boat Tags are available at City Hall, at the City operated Branch Lake Launch located off the Happytown Road, and may be available from the City Manager appointed sub-station agents.
3. By the end of December of each year, the City Council shall establish the Boat Tag Fee Schedule for the next calendar year.
4. Boat Tags are mandatory for all boats, with or without inspection waivers.
5. Should a Boat Tag become mutilated so that it cannot be read easily, it must be removed and be replaced with a new Boat Tag.

B. BOAT INSPECTION

No person shall be extended the privilege of boating, including canoeing and kayaking, on the waters of Branch Lake without a boat inspection conducted for the presence of aquatic plants, unless otherwise specified. If an aquatic plant fragment is discovered during a boat inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Boat Inspection Guidelines and shall be provided to the City of Ellsworth Police Department within 24 hours of discovery. The boat must be re-inspected and found to be free of aquatic plants before it will be permitted to enter Branch Lake.

1. City Inspector

Boat inspections are to be conducted by City Boat Inspectors at the City

operated Branch Lake Boat Launch off the Happytown Road. The City Manager may establish inspection substations in convenient locations and/or appoint inspection agents.

2. Certified Self-Inspector

i. Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Boat Inspection Training course.

ii. Certified Boat Self-inspectors can inspect boats under the following conditions:

1. The subject boat has a valid Tag.
2. The boat is inspected per the Ellsworth Boat Inspection Guidelines.

After these conditions have been met, the boater can be issued a valid permit by the Certified Boat Self-inspector.

iii. Self-inspection of boats is prohibited if in the last twelve (12) months the boat has been in an infested water body as defined in Art. 1, Sec. 13.

iv. Self-inspection of personal watercraft (PWC) is prohibited.

3. Waiver

i. The requirements for inspections and permits are waived for boats belonging to a household owning property or right-of-way abutting Branch Lake - herein referred to as a “resident boat,” if all the following conditions are met:

1. The resident boat has not been used in any other water body since it was last hauled out of Branch Lake;
2. The resident boat has not been in any other water body within the last twelve (12) months; and
3. The resident boat will not be used in any other water body during the year’s boating season.
4. The owner of property on, or abutting a right-of-way to, Branch Lake attests in writing on a City waiver application form that the above stipulations apply and will be followed.

C. PERMIT

i. Boating on Branch Lake is only allowed by permit. Boaters shall have their permits with them at all times, with the exception of “resident boats.”

ii. Once a boat passes inspection and is found clear of any aquatic plants a City Boat Inspector or a Certified Self-Inspector may issue a Branch Lake Boating Permit.

ARTICLE IV. AEROPLANE INSPECTION

Tag, Inspection, & Permit (TIP)

Landing of any aeroplane in Branch Lake is prohibited unless: 1) the craft has a valid TAG (sticker), 2) an INSPECTION has been conducted, and 3) a Self-inspection PERMIT LOG has been filled out.

A. TAG

1. An Aeroplane Tag consists of a City-supplied sticker applied to the left float of the aeroplane in plain view above the waterline.
2. Aeroplane tags are available at City Hall for certified aeroplane self-inspectors, and are available from the Branch Lake Steward.
3. By the end of December of each year, the City Council shall establish the Tag Fee Schedule for the next calendar year.
4. Should a Tag become mutilated so that it cannot be read easily, it must be removed and be replaced by a new Aeroplane Tag.

B. INSPECTION & PERMIT

No person shall be extended the privilege of operating an aeroplane on the waters of Branch Lake without an inspection conducted for the presence of aquatic plants. If an aquatic plant fragment is discovered during an inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Aeroplane Inspection Guidelines and shall be provided to the City of Ellsworth Police Department within 24 hours of discovery. The aeroplane must be re-inspected before it will be permitted to land on Branch Lake.

Certified Self-Inspector

- i.** Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Aeroplane Inspection Training course.
- ii.** Certified Aeroplane Self-inspectors can inspect aeroplanes under the following conditions:
 1. The subject aeroplane has a valid Tag.
 2. The aeroplane is inspected per the Ellsworth Aeroplane Inspection Guidelines.

When these conditions have been met, the Aeroplane Self-inspector completes a permit (log) and keeps it with the aircraft.
- iii.** Self-inspection of an aeroplane is prohibited if in the last twelve (12) months the aeroplane has been in an infested water body as defined in Art. 1, Sec. 13. If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City of Ellsworth Water Department, and

schedule an inspection to be conducted by the Water Department Superintendent, Branch Lake Steward or any duly designated Ellsworth Police Officer.

Ellsworth Ord55 approved 01-14-13

City of Ellsworth Chapter 56 Unified Development Ordinance

1. Adopted June 18, 2012
2. Amended August 20, 2012 - Articles 3 Zoning Districts, 6 Development Review, 11 Parking Standards, and 14 Definitions.
3. Amended November 19, 2012 – Articles 2 Plan Approval and Permitting Procedures, 4 Shoreland Zoning, 8 Performance Standards, and 10 Stormwater Management Design and Construction Standards.
4. Amended January 14, 2013 – Articles 3 Zoning Districts and 14 Definitions, as well as the Zoning Map.
5. Amended July 15, 2013 – Article 6 Development Review.
6. Amended March 17, 2014 – Articles 1 Purpose and Authority, 8 Performance Standards, 12 Sign Standards (when the Unified Development Ordinance was adopted on June 18, 2012 Article 12 was reversed as place holder – left blank. On March 17, 2014 Chapter 9 Sign Ordinance of the Ellsworth Code of Ordinances was repealed and replaced with this Chapter), and 14 Definitions.
7. Amended April 21, 2014 – Articles 3 Zoning Districts and 12 Sign Standards.
8. Amended April 19, 2016 – Article 8 Performance Standards.

Attest:

City Clerk

Heidi-Noel Grindle

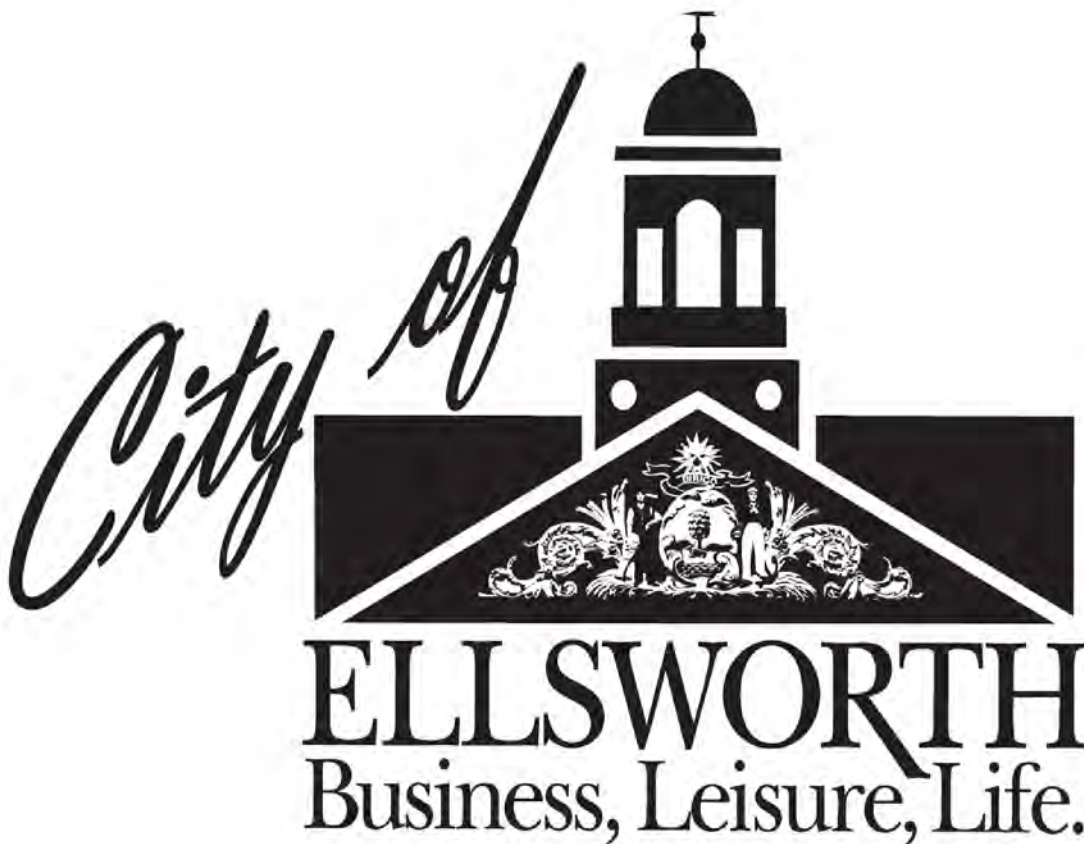


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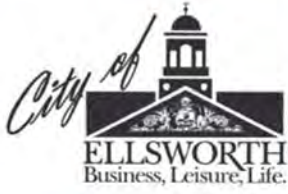
- 1300 ESTABLISHMENT AND ORGANIZATION
- 1301 JURISDICTION
- 1302 POWER AND DUTIES
- 1303 GENERAL PROCEDURES
- 1304 PROCEDURE FOR ADMINISTRATIVE REVIEW
- 1305 VARIANCE PROCEDURES
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APPENDICES

- Appendix A Land use Map (small version of the official map)
- Appendix B City of Ellsworth Urban Core.
- Appendix C City of Ellsworth urban Core in the Direct Watershed of the Union River Estuary.

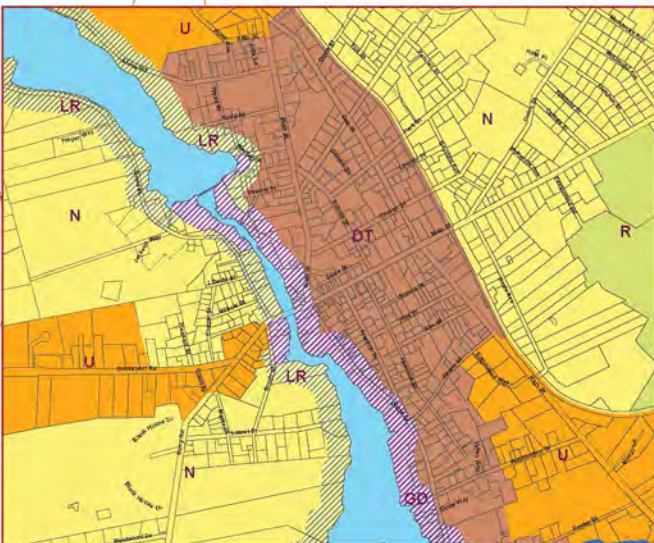
City of Ellsworth Official Land Use Map



Legend

- Well Area B - Well Treatment Area
- Well Area A - Well Treatment Area
- Zoning Districts**
- Business Park (BP)
- Commerce Park (CP)
- Commercial (C)
- Downtown (DT)
- Drinking Water (DW)
- Drinking Water Protection (DP)
- General Development (GD)
- Industrial (I)
- Limited Commercial (LC)
- Limited Residential (LR)
- Neighborhood (N)
- Resource Protection (RP)
- Rural (R)
- Stream Protection (SP)
- Urban (U)
- Water
- Wetlands

Downtown Area Inset



0 250 500 1,000 1,500 2,000 Feet 1 inch = 500 feet

0 0.5 1 2 3 4 Miles

1 inch = 3,000 feet



Note: Well Area A Bedrock Well Restricted Area and Well Area B Bedrock Well Treatment Area are fully described on a map by the Maine Department of Environmental Protection, updated May 20, 2009 by Wayne Parade, filed in the Ellsworth City Clerk's Office.

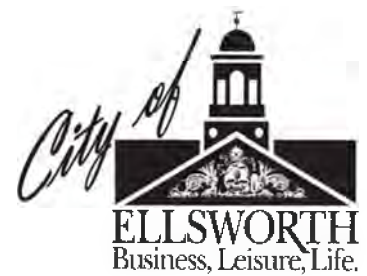
I hereby certify that this is a true and accurate copy of the official land use map of Ellsworth, Maine, approved by the Ellsworth City Council on January 14, 2013.

Heddi Noel Grande
City Clerk

**City of Ellsworth
Chapter 56
Unified Development Ordinance**

**Article 1
Purpose and Authority**

Amended March 17, 2014



ARTICLE 1 PURPOSE AND AUTHORITY

101 TITLE

The Ordinance and the accompanying Official Land Use Map(s) shall be known as the Unified Development Ordinance of the City of Ellsworth, Maine (UDO) and shall be referred to herein as this “Ordinance” or “UDO.”

102 AUTHORITY AND ADMINISTRATION

102.1 Authority. The Ordinance has been prepared in accordance with the provisions of Title 30-A Maine Revised Statutes Annotated (M.R.S.A.), Title 38 M.R.S.A. Sections 435-449, as amended, and other sections as cited in support of specific articles.

102.2 Administration. This Article shall be administered in general by the Planning Board or the Code Enforcement Officer, referred herein as *the Administrator*, and as described below:

- A. By the Planning Board for projects requiring Planning Board Approval as specifically authorized in this Ordinance.
- B. The City Planner and its designee serve in advisory capacity to the Planning Board and are responsible to provide guidance to the applicant whose project requires Planning Board Review.
- C. By the Code Enforcement Officer for all projects not requiring Planning Board and for projects in the Commerce Park zoning district. All enforcement of construction activities shall be the responsibility of the Code Enforcement Officer.

103 GENERAL PURPOSES

103.1 General Purposes. The general purposes of the Ordinance are to:

- A. Implement the provisions of the City’s Comprehensive Plan.
- B. Promote the health, safety, and general welfare of residents.
- C. Encourage the most appropriate use of land.
- D. Promote traffic safety.
- E. Preserve access to adequate light, air, water and land.
- F. Conserve natural resources and open space.
- G. Protect archaeological, historic and scenic resources.
- H. Allow for the strengthening of the economic base and the enhancement of the appearance of business and commercial zoning districts throughout the City.

103.2 Specific Purposes. The specific purposes for individual articles of the Ordinance are stated within those articles, as applicable.

104 APPLICABILITY

The provisions of the Ordinance shall govern all buildings, structures, lands, and uses regardless of ownership. All government entities including the State of Maine, the County of Hancock, and the City of Ellsworth are subject to the Ordinance unless otherwise exempt.

“Liberally Interpreted” means that if there is ambiguity or conflict the Ordinance shall be broadly applied to affect its purposes rather than restrictively or technically applied according to its strict terms.

105 CONSISTENCY WITH PLANS

The Ordinance is consistent with the general intent of the Comprehensive Plan and other neighborhood, area, or specific plans, as referred herein, and adopted by the Ellsworth City Council.

106 COORDINATION WITH OTHER REGULATIONS.

The use of building and land within the City of Ellsworth is subject to all other regulations as well as the Ordinance, whether or not such other provisions are specifically referenced in the Ordinance. References to other regulations or provisions of the Ordinance are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure or use from regulations.

107 CONFLICTS WITH OTHER REGULATIONS. Whenever the requirements of the Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation, or ordinance, the more restrictive requirements shall govern.

108 DEFINITIONS, UN-TITLES AND UN-NUMBERED AIDS, CROSS-REFERENCES

108.1 Definitions. The Ordinance shall be liberally interpreted in order to further its underlying purposes. The meaning of any and all words, terms, or phrases in the Ordinance shall be construed in accordance with Article 14 Definitions, or otherwise as found in the dictionary.

108.2 Un-titled and Un-numbered Aids. the Ordinance contains un-titled/un-numbered graphics, pictures, illustrations, and drawing in order to assist the reader in understanding and complying with the Ordinance. However, to the extent that there is any inconsistency between the text of the Ordinance and such graphic, picture, illustration, or drawing, the text controls unless otherwise provided in the specific section.

108.3 Cross-References. Articles, sections, and tables in this ordinance are cross referenced for the convenience of the reader. Any omissions or mis-references shall not preclude projects from having to meet the requirements of applicable articles, sections, and tables in the ordinance.

109 VALIDITY AND SEVERABILITY

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

110 EFFECTIVE DATE

The Ordinance and portions thereof shall become effective on the date specified by the enabling City Council action.

111 AVAILABILITY

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

112 PENALTIES FOR VIOLATION

In accordance with Title 30-A M.R.S.A. Section 4452, any person, including but not limited to a landowner, a landowner's agent or a contractor, violating any provision of this ordinance shall, upon conviction, be fined not less than \$100.00 or more than \$2,500.00 for each such offense. Each offense shall constitute a separate offense for each day the violation occurs. Any violation of this Article shall be deemed to be a nuisance.

113 REMEDIES

If any project or system is erected, constructed, reconstructed, altered, repaired, converted, or maintained in violation of this Ordinance, the Administrator or any other person who would be damaged by such violation, in addition to other remedies, may seek injunctive or any other appropriate relief in a civil proceeding.

114 APPEALS

114.1 Generally. An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer or of the Planning Board with the exception of subdivision matters within 30 days of the date of the decision appealed from. The Board of Appeals may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within thirty (30) days of the decision.

114.2 Subdivisions. An aggrieved party may appeal any decision of the Planning Board on subdivision matters under this Ordinance to the Hancock County Superior Court, within 30 days.

114.3 Sign Standards. The Board of Appeals is only authorized to grant variances for sign set back and location, not variances relating to sign dimension, height or the number of signs. An appealed sign permit decision shall include reasons for the request. An exception from compliance with Article 12 Sign Standards shall only be granted by the Board of Appeals if there are exceptional or unusual circumstances applying to the property involved which do not apply generally to properties in the vicinity with the same zoning. One of the following three conditions shall be met: 1) visual obstructions; 2) unusual building location on-site; and 3) unusual building design, architectural style, or historic significance. The Board of Appeals shall determine that the granting of the exception will not result in the project being inconsistent with the intent and purpose of Article 12 Sign Standards and will not constitute a grant of special privilege or entitlement inconsistent with limitations applied to other properties in the vicinity with the same zoning. And, that the granting of the exception is for superior design and will not result in visual clutter.

115 AMENDMENTS TO THE ORDINANCE

115.1 Authority.

The provisions of the Ordinance including the boundaries of the Zoning Districts shown on the Official Land Use Map(s) may from time to time be amended, or repealed in accordance with the provision of Title 30-A M.R.S.A. as amended.

115.2 Planning Board Reports to City Council.

- A. Proposed amendments or repeal must first be submitted to the Planning Board for their consideration.
- B. Within 20 days of receiving a proposal for an amendment or repeal, the Planning Board shall schedule a public hearing on the proposed amendment.
- C. The notice must be published at least 2 times in a newspaper that has a general circulation in the City of Ellsworth. The date of the first publication must be at least 13 days before the hearing and the date of the second publication must be at least 6 days before the hearing.
- D. The Planning Board shall make its official report at the next meeting of the Ellsworth City Council, which is held at least 10 days after the public hearing held by the Planning Board.

115.3 Procedure of Amendments by the City Council.

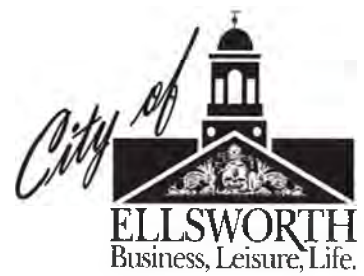
- A. **Public Hearing Notice.** Before adopting a new Official Land Use Map or amending the Ordinance or Official Land Use Map, including amendments to Shoreland Zoning, the Ellsworth City Council will post and publish notice of the public hearing to provide the public adequate time to comment, in accordance with the following provisions.

- i. Contents. The notice must be written in plain English, understandable by the average citizen and contain a copy of the Official Land Use Map indicating the portion of the City affected by the proposed amendment.
- ii. Posted. The notice must be posted in the Ellsworth City Hall at least 13 days before the public hearing.
- iii. Published. The notice must be published at least 2 times in a newspaper that has a general circulation in the City of Ellsworth. The date of the first publication must be at least 13 days before the hearing and the date of the second publication must be at least 6 days before the hearing.
- iv. Mailed. For each parcel within the City that is in or abutting the portion of the City affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. The City Planner shall prepare for the City Council and file with the City Clerk a written certificate indicating those persons to whom the notice was mailed and at what address, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate.
- v. Additional Notice for Particular Circumstances.
Notice must be given to additional recipients in accordance with this subsection when the following described conditions occur.
 - a. Changes to Allowed Uses. Notice must be sent to affected landowners when the City of Ellsworth proposes an amendment to the Ordinance or Official Land Use Map that has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses are permitted or permitting any industrial, commercial or retail uses where any of these uses are prohibited. Notice must also be sent to a Public Drinking Water supplier if the area to be rezoned contains its Source Water Protection Area - refer to Title 30-A §4352.
 - b. Shoreland Zoning Resource Protection. Notification to Landowners whose property is being considered for placement in a Resource Protection Zone shall comply with Title 38, §438-A public notice shall be given according to State Law

City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 2
Plan Approval and Permitting Procedures

Amended November 19, 2012



ARTICLE 2 PLAN APPROVAL AND PERMITTING PROCEDURES

201. PURPOSE

The purpose of this Article is to consolidate the procedures for filing and processing applications for development. The format is designed to allow users to ascertain the various steps needed to be able to build in Ellsworth.

202 BUILDING PERMITS REQUIRED

It shall be unlawful to start any work for the purpose of construction, alteration, or removal of any building or engage in any other activity or use of land or structure requiring a permit in the zoning districts in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use, unless a building permit has been issued in conformity with this Ordinance. No building permit may be issued for an activity which requires review by the Planning Board until approval is granted by the Planning Board.

203 GENERAL PROCEDURES

A building permit is required for all development, unless otherwise excepted, to ensure compliance with this Ordinance. For some projects, Planning Board approval is needed before a Building Permit can be issued. General procedural elements common to all development include, but are not limited to: a) the submittal of a complete application, including required fee payments and appropriate back-up information and studies; b) the review of the submittal by the Administrator; and c) the decision to approve or deny.

204 LEVELS OF REVIEW BY PROJECT TYPE

There are different levels of review associated with the implementation of this Ordinance based on the complexity, location, and/or impact of the project. In some cases more than one level of review may be required.

204.1 Limited Scope Project. This is a basic level of review conducted by the Code Enforcement Officer for uses such as, but not limited to: one- and two-family residential units; home-occupation; demolition; and many activities within the Shoreland Zone; and for uses having received prior Planning Board approval.

204.2 Site Plans. There are two levels of Site Plan review: 1) Minor Use Site Development Plan; and 2) Major Use Site Development Plan. The Code Enforcement Officer shall classify Site Development Plan review levels. The Code Enforcement Officer may classify a Minor Use Site Development Plan project as a Major Use Site Development Plan project after determination that it may have significant impact to the physical, social, or economic environment because of stormwater, traffic, erosion, dust, lighting, or other factors.

A. Minor Use Site Development Plan Review. This level of review shall include those projects that require a higher level of scrutiny than a Limited

Scope Project but do not require a public hearing. Minor Use Site Development Plan reviews are conducted by the Code Enforcement Officer.

- B. **Major Use Site Development Plan Review.** This level of review is for uses that are relatively large and have a potentially greater impact than Minor Use Site Development Plan, and where public comments are warranted. Major Use Site Development Plan reviews are conducted by the Planning Board.

204.3 Subdivision Plans. All subdivision plans shall be reviewed by the Planning Board.

205. REVIEWERS

205.1 Code Enforcement Officer. The Code Enforcement Officer issues Limited Scope Project permits, reviews and permits Minor Use Site Development Plans and is responsible for the enforcement of this Ordinance and the enforcement of Planning Board Approvals.

205.2 Fire Chief. The Fire Chief or his designee reviews the site and construction plans for fire and life safety details including but not limited to occupancy type, fire department access, fire hydrant location, construction type, and general fire and life safety. The reviews ensure that the plans meet the intent of applicable codes and standards for fire and life safety.

205.3 Planning Board. The Planning Board is responsible for reviewing and acting upon applications for Major Use Site Development Plan, Subdivision Plans, and some Shoreland Zoning proposals in accordance with the provisions of this Ordinance. The Planning Board also makes recommendations to the City Council on amendments to this ordinance and rezoning matters. Following Planning Board approval, the applicant shall apply to the Code Enforcement Officer for a Building Permit.

- A. **Public Hearings.** Plan review by the Planning Board requires at least two public hearings with the exception of plan revisions and amendments, which require only one public hearing. The City Planner coordinates review processes on behalf of the Planning Board, recommends actions for project approvals, and maintains records.

- B. **TRT.** All Planning Board projects are subject to review by the Technical Review Team (TRT). The TRT, made up of City Department heads, provides the Planning Board with an opinion on the completeness of the project proposal and on the quality of the information provided.

205.4 City Council. The City Council, the legislative body of the City of Ellsworth, decides on proposals to amend this Ordinance, including rezoning, to accept private roads as public roads, and has the authority to modify road standards and other

decision as specified in this Ordinance. A public hearing is required prior to the City Council making decisions pertaining to this Ordinance.

205.5 Board of Appeals. In general, decisions of the Code Enforcement Officer or Planning Board may be taken to the Ellsworth Board of Appeals with the exception of Subdivision Plans which shall be taken directly to the Hancock County Superior Court, or as specifically stipulated in this Ordinance. The Code Enforcement Officer coordinates review processes on behalf of the Board of Appeals and maintains records. Refer to Article 1 section 114 and Article 13 Board of Appeals.

206. PROCEDURES FOR BUILDING PERMIT AND MINOR USE PLAN REVIEW

206.1 Building Permit Application. Any application for a building permit shall be in writing and signed by the applicant. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date of its receipt.

206.2. Minor Use Site Development Plan Notice to Abutters. In consideration of a Minor Use Site Development Plan application, the Code Enforcement Officer shall send abutters notice by first class mail to property owners within 250 feet of any property line if the applicant's property is in the Urban Core Area, and within 500 feet elsewhere. The Code Enforcement Officer shall also send notice to the review authority of neighboring political divisions if any portion of a proposed development is within 500 feet of the political boundary or unless otherwise specified in this Ordinance. This notice shall provide a brief description of the proposed project, the physical location, and announce a 10-day public comment period. The public comment period will commence upon the mailing of said notices to the address of record as maintained by the City Assessor. At the end of the public comment period, the Code Enforcement Officer will review the public comments and either grant Minor Use Site Development Approval and issue the building permit or move the proposed project up to Major Use Site Development Plan to be reviewed by the Planning Board. Agricultural and forestry activities pertaining to soil disturbance and addition of fill are exempt from public notices.

206.3 Processing of Building Permit Applications. One copy of the building permit application shall be returned to the applicant by the Code Enforcement Officer who shall have marked such copy either approved or denied or approved with conditions and attested to same by the Code Enforcement Officer's signature on such copy. The second copy of such application, similarly marked, shall be retained by the Code Enforcement Officer and shall be kept on file as a public record. The third copy shall be given to the City Assessor. Failure of the Code Enforcement Officer to issue written notice of the decision within 30 days of the date of filing of the application shall constitute refusal of the permit.

206.4 Posting of Building Permits. The applicant shall conspicuously post any permit issued, on the lot where the activity will occur, at a location clearly visible from

the street unless other means of posting are authorized by the Code Enforcement Officer.

206.5 Expiration of Building Permits. If no substantial start of construction has been made within 12 months beginning with the date the building permit is issued, the permit shall expire. If construction has not been completed within 36 months beginning with the date the permit is issued, the permit shall expire. The Code Enforcement Officer may grant a onetime extension for a building permit when a project is delayed by circumstances beyond the applicant's control.

206.6 Expiration of Minor Use Site Development Plan Approval. Minor Use Site Development Plan approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained, said approval shall be deemed to have lapsed.

206.7 Certificates of Occupancy and Site Compliance. Prior to the sale, lease, or occupancy of any new building, or use of a site, the builder or developer (person who received a valid building permit) shall secure a Certificate of Occupancy and/or a Certificate of Site Compliance, as applicable, from the Code Enforcement Officer. Prior to issuance of any certificates, the Code Enforcement Officer will check to see that all requirements under this Ordinance and other applicable City Ordinances have been met. Any person who sells, leases, or occupies a building or uses a site within the City of Ellsworth prior to securing the appropriate certificate(s) by the Code Enforcement Officer is in violation of this Ordinance and is subject to its penalties. The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request.

A. **Certificate of Occupancy.** This is a document issued by the Code Enforcement Officer allowing the occupancy or use of a structure and certifying that the structure has been constructed or will be used in compliance with the applicable Code and Ordinances. Said Certificate shall be requested by the applicant within 15 days after the erection or alteration have been completed and approved.

B. **Certificate of Site Compliance.** This is a document issued by the Code Enforcement Officer certifying that the proposed site work complies with the terms and provisions of this Ordinance and with applicable approvals and conditions. Certificate of Site Work Compliance shall be secured by the applicant within 6 months of securing a Certificate of Occupancy if applicable or prior to beginning of the activities for which approval is intended including but not limited to offering for sale.

207 PROCEDURES FOR MAJOR SITE DEVELOPMENT PLAN AND SUBDIVISION REVIEW

207.1 Applications in Writing. All applications for Major Use Site Development Plan, Subdivision, Revisions and/or other plan approval by the Planning Board, as specified shall be made in writing to the City Planner and include the completed Land Use Application form. All applications shall be made by the owner of the property or agent as designated in writing by the owner.

207.2 Application Deadline. Applications shall be delivered to the City Planner with all appropriate fees no later than 4:00 PM, twenty days before the scheduled Planning Board meeting. The Office of the City Planner shall post at City Hall a schedule of meetings each December for the coming calendar year.

207.3 Supplemental Application Materials.

A. **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Regular Technical Review Team Meeting.

B. **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chairman to be relevant, necessary, brief enough to be quickly assimilated, and ten copies are provided and of a type that is compatible with information technology currently available at the City of Ellsworth.

207.4 Application Completeness. The City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Determination of completeness for approval purposes will be made by the Planning Board at a scheduled meeting. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.

207.5 Planning Board Agenda. Complete applications shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chairman may call a special meeting if the number of agenda items or other circumstances seem to require it.

207.6 Technical Review Team Regular Meeting. The City Planner shall call an Ellsworth Technical Review Team meeting consisting of the Police Chief, the Fire Chief, the Highway Foreman, the Water Superintendent, the Wastewater Superintendent, the Code Enforcement Officer, and the Planner, within 7 days of

an application deadline. This meeting shall be referred to as the Regular Technical Review Team meeting. The City Planner, in coordination with the Technical Review Team, conducts a final qualitative review of the applications on the agenda and issues a memorandum of findings to the Planning Board and the applicants

207.7 Public Hearing. Prior to taking final action on any preliminary or final application, the Planning Board shall hold a hearing to afford the public the opportunity to comment on the application.

207.8 Notice to Abutters. In consideration of an application to the Planning Board, the City Planner shall send notice by first class mail to property owners within 250 feet of any property line if the applicant's property is in the Urban Core Area, and within 500 feet elsewhere. The City Planner shall also send notice to the review authority of neighboring political divisions if any portion of a proposed development is within 500 feet of the political boundary or unless otherwise specified in this Ordinance. This notice shall indicate the time, date, and place of the Planning Board meeting or site visit. Other notices may apply as specified in this Ordinance or applicable State laws.

207.9 Conditions. The Planning Board may attach reasonable conditions to plan approvals to ensure conformity with the standards and criteria of this Ordinance.

207.10 Planning Board Approval.

- A. **Major Use Site Development Plan Expiration.** Approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained, said approval shall be deemed to have lapsed.
- B. **Subdivision Expiration.** The plan shall be null and void if the period of time between Planning Approval and recording at the Hancock Registry of Deeds is greater than 100 days.
- C. **Existing Violations.** Planning Board approval shall not be granted for an application involving a structure if the structure would be located in an unapproved subdivision; the application is in violation of the provision of a previously approved plan; or the approval would violate any other local ordinance or regulation or any state law, which the City of Ellsworth is responsible of enforcing

208 PLAN REVIEW AND BUILDING PERMIT FEE SCHEDULE

208.1 Building Permit Fees.

Before a building permit may be issued, the applicant shall show right, title or interest and pay a fee to the Code Enforcement Officer in accordance with the fee schedule in Table 208.1 below:

Table 208.1 BUILDING PERMIT FEE RATES					
	New Construction and Additions	Demolition	Alterations* per estimated cost	Activities within the Shoreland Zone setbacks*	Minor Use Site Plan*
One- & two- Family Dwellings	\$0.17 per sf	\$0.05 per sf	\$3 per \$1,000 cost	\$25 flat fee	\$100 flat fee
Accessory Structures	\$0.15 per sf	\$0.05 per sf	\$3 per \$1,000 cost	\$25 flat fee	\$100 flat fee
Other Buildings	\$0.20 per sf	\$0.05 per sf	\$3per \$1,000 cost	\$25 flat fee	\$100 flat fee

NOTES:	Number of Stories	Story Factor
sf = building size in square feet.	1.0	1.00
The chart above provides the Building Permit Fee Rates for one-story buildings. To calculate the fee for multi-story building construction, addition or demolition, multiply the total building square footage by the Rate and by the appropriate Story Factor provided at right.	1.5	1.45
	2.0	1.70
	2.5	1.85
	3.0	2.05
	3.5	2.30
*Do Not use the Story Factor at right to calculate the fee for alterations, Shoreland Zone, and Minor Use Site Development Plan as these are flat fees.	4.0	2.45
More than one fee may be applicable.		

Note: To learn about other fees that may apply to your project such as, but not limited to, electrical, internal plumbing, utility hook-ups, development fee, licensing, etc. please dial 207-667-4910 during regular business hours.

208.2 Major Use Site Development Plan and Subdivision Plan Review Fees. Acceptance of applications will be contingent upon receipt by the Administrator or the City Planner as applicable of all fees described in this Section.

A. Minor Use Site Development Plan. \$200

B. Major Use Site Development Plan.

- i. Sketch Plan. \$25.
- ii. Preliminary Plan. \$200.
- iii. Final Plan. Apply the cost per square footage of buildings and structures as shown in Table 207.2.1, in addition to the cost of Site Disturbance as presented in Table 207.2.2:

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

Table 207.2.1 COST PER SQUARE FOOTAGE (sf)	
Total Square Footage	Fee
Up to 5,000 sf	\$250
5,001-10,000 sf	\$500
10,001-20,000 sf	\$750
20,001-30,000 sf	\$1,000
30,001-40,000 sf	\$1,250
40,001-50,000 sf	\$1,500
50,001-100,000sf	\$2,000
100,001 sf and more	\$2,500

Table 207.2.2 Site Disturbance Fees Excludes buildings and structures	
Acres of Soil Disturbance	Fee
First acre	\$0
More than one acre	\$100/acre over 1 acre or any part of an acre
<i>Example: Disturbed Area = 2.2 acres: Fee = \$ 200 (1.2 acres more than 1 acre)</i>	

C. Subdivision Review.

Applications for Subdivision Approval shall be accompanied by the following fees:

- i. Sketch Plan. \$25.
- ii. Preliminary Plan. \$20 per lot or dwelling unit
- iii. Final Plan. \$25 per lot or dwelling unit.
- iv. Subdivision of New or Existing Structures. Site Plan Review fees apply.

D. Additional Fees.

- i. Revisions. Applications for revisions to approved plans shall be charged a fee of \$100.

- ii. Rezoning. Applications for rezoning shall be charged \$100.
- iii. Others. Any other costs to the City for extraordinary measures needed to review applications may result in additional fees.

209 PEER REVIEW

- A. **Request by City Planner.** When, in its advisory capacity to the Planning Board, the City Planner determines that the Ellsworth Technical Review Team does not have the expertise to ensure compliance with this Ordinance, the City Planner may ask the applicant for a peer review. The applicant may comply with the request or decide to ask for a determination by the Planning Board.
- B. **Request by the Planning Board.** When the Planning Board determines that it and/or the Ellsworth Technical Review Team does not have the expertise to ensure compliance with this Ordinance it may require a peer review.
- C. **Request by Code Enforcement Officer.** When the Code Enforcement Officer determines that it does not have the expertise to ensure compliance with this Ordinance it may require a peer review.
- D. **Hiring of Expert Consultant for Peer Review.** Per the above sub-sections A through C, the City may choose to hire an expert consultant to review any submission of an application. The consultant shall report as to the compliance or non-compliance with this Article, and report, if applicable, of procedures which will result in compliance. The selected consultant shall estimate the cost of such review and the applicant shall deposit with the City the full estimated cost, which the City shall place in an escrow account. The City shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. To be selected, the consultant shall be fully qualified to provide the required information and shall be mutually acceptable to the Administrator or the City Planner and the applicant.
- E. **Hiring of Expert, Request for Additional Studies.** Only the Planning Board may require the applicant to undertake any additional study, which it deems reasonable and necessary to ensure that the requirements of this Ordinance are met. The costs of all such studies shall be borne by the applicant.

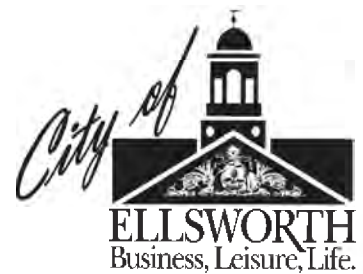
210 PERFORMANCE GUARANTEES

Performance guarantees including surety bonds, money, or letters of credit may be required by the City Manager, the City Council, or the Planning Board in an amount sufficient to cover the cost of all or any part of the improvements.

**City of Ellsworth
Chapter 56
Unified Development Ordinance**

**Article 3
Zoning Districts**

Amended August 20, 2012
Amended January 14, 2013
Amended April 21, 2014
Amended May 21, 2018



ARTICLE 3 ZONING DISTRICTS

301 GENERAL

301.1 District Classification. In order to classify, regulate and restrict the locations of uses and locations of buildings designated for specific areas; and to regulate and determine the areas of yards and other open spaces within or surrounding such buildings, property is hereby classified into districts.

301.2 Establishment of Zoning Districts. For the purpose of this Ordinance, the City is hereby divided into General Land Use including overlays and Shoreland Zoning Districts.

A. General Land Use Zoning Districts. These districts are regulated per this Article.

- Downtown (DT)
- Urban (U)
- Neighborhood (N)
- Commercial (C)
- Commerce Park (CP)
- Industrial (I)
- Business Park (BP)
- Rural (R)
- Drinking Water (DW)
- Well Overlay

B. Shoreland Zoning Districts. These districts are defined and regulated in Article 4 Shoreland Zoning.

- Limited Commercial (LC)
- General Development (GD)
- Limited Residential (LR)
- Resources Protection (RP)
- Drinking water Protection (DP)
- Stream Protection (SP)

302 OFFICIAL LAND USE MAP.

The boundaries of each zoning districts are to be indicated upon the official Land Use Map which together with all notations and explanatory material thereon is hereby adopted by reference and made a part of this ordinance, said map being entitled "Land Use Map, City of Ellsworth". The official Land Use Map shall be certified by the attested signature of the City Clerk and shall be located in the City Clerk's office. Any alteration in the location of the boundaries of a zoning district hereafter approved by the City Council, and by the Maine Department of Environmental Protection for the shoreland areas, shall be reflected in a corresponding alteration of the Map (including addendum).

The official Land Use Map shall be located in the City Clerk's office and shall be the final authority as to the current zoning status of the land and water area, building and other structures in the city.

303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES.

303.1 Where uncertainty exists to the boundaries of districts as shown on the official Land Use Map, the following shall apply:

- A. Where boundaries are shown as approximately following the centerlines of streets or railroad right-of-ways, they shall be construed to follow such centerlines;
- B. Boundaries shown as approximately following the location of property, lot lines, or municipal boundary shall be construed as following such lines;
- C. Boundaries shown as following shore lines or the center lines of streams, rivers, or water bodies shall be construed to follow such lines;
- D. Boundaries shown as parallel to or extensions of the features listed in section A through C above, shall be so construed and distances not specifically indicated shall be determined by the scale of the map;
- E. Where physical or cultural features existing on the ground differ from those shown on the official Land Use Map, or uncertainty exists with respect to the location of a boundary, the Board of Appeals shall interpret said map.

304 ZONING AFFECTS ALL STRUCTURES AND LAND.

Except as hereinafter specified, no structures or land hereafter be used or occupied and no structure or part thereof shall be erected, constructed, reconstructed, moved, or altered unless in conformity with all the regulations herein specified for the district in which it is located.

305 USE REGULATIONS

305.1 Generally. Those uses permitted as principal uses or building within each zoning district are those uses listed in the Table of Land Use Regulations presented below. Permitted accessory uses and structures and home occupations shall be allowed only if the use is permitted as principal uses with the zone and shall meet the performance standards for such use.

305.2 Interpretation – Materially Similar Uses. The Administrator shall determine if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described. The Administrator shall only grant approval of a similar use after having found that the impact of the use will not be any greater than the impact of the use to which it is being compared. It is the intent of the matrix to group similar or compatible land uses into specific zoning districts as permitted uses. Uses not listed as a permitted use are presumed to be prohibited from the applicable zoning district. In the event that a particular use is not listed in the use matrix, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the Administrator shall determine whether a materially similar use exists in this section.

Should the Administrator determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed, and the Administrator’s decision shall be recorded in writing.

305.3 Dimensional Regulations. The lot design (frontage, setback, coverage, etc.) and building design (height) requirements are established for each zoning district in the table of Dimensional Requirements below. Additional dimensional regulations may apply as presented in Article 8 Performance Standards.

305. 4 More than one principal building on a lot. Except for cluster subdivisions, if there is more than one principal building on a lot, the area, yard, height and density requirements of the applicable district shall apply separately to each building, but the combined area occupied by the total number of buildings on the lot shall not exceed the maximum lot coverage requirement of the district.

306. ZONE PURPOSE.

306.1 Through the establishment of the zoning districts, the City seeks to encourage development, safeguard quality of life; encourage density in the growth area including networking, walkability, and enhance business climate; foster creativity in development; support sustainability including long term economic prosperity, protect natural resources, and protect neighborhood for incompatible uses.

A. **Downtown (DT).** The heart of this zone is Main Street. It is what is special about Ellsworth. This zone allows a mixture of uses. Uses in this zone are concentrated making it highly walkable steering away from single-purpose automobile trips. Off-street parking requirements are flexible. It is the intent of this zone to provide for a mixture of uses such as commerce, culture, and residential.

B. **Urban (U).** The purpose of this zone is to provide for a mix of commercial uses including retail business, professional offices, and dense residential.

- C. **Neighborhood (N).** The purpose of this zone is to recognize those transition areas and provide for a well-planned compatible mixed use environment. It encourages a combination of land uses which might normally be regarded as incompatible. Uses locating in this zone shall be landscaped to ensure compatibility and screening. This purpose of this zone is to protect existing and attract new residential neighborhoods. It is either served or has the potential to be served by public water and sewer.
- D. **Commercial (C).** This is a high traffic automobile-oriented zone designed specifically to serve as an attractive retail trade area for the region. This zone will allow for dense residential.
- E. **Commerce Park (CP).** The purpose of this zone is to attract service business and light manufacturing. It aims to present an attractive environment for new employees in a business park-type setting.
- F. **Industrial (I).** The purpose of this zone is to provide for business, professional offices, and light and heavy industries with appropriate site design. Uses locating in this zone shall be landscaped to ensure compatibility and screening. The purpose of this zone is to provide space for existing industries, their expansion, and future industrial development and to prevent conflicts with residential and business uses.
- G. **Business Park (BP).** The purpose is to accommodate a mix of uses including concentrated fabrication, manufacturing, and industrial uses that are suitable based upon adjacent land uses, access to transportation and public services and facilities. It is the intent to provide an environment for industries that is unencumbered by nearby residential and commercial development.
- H. **Rural (R).** The zone offers a low-density rural area that is primarily for single family-homes, traditional rural occupations, agricultural activities, and forestry. Significant incentives are provided for the creation of cluster developments.
- I. **Drinking Water (DW).** The purpose of this zone is to protect the Branch Lake Watershed area from development that may threaten drinking water quality. It aims to protect areas with high natural resource value from incompatible development. The development that does occur in this area is intended to have a low environmental impact. In lieu of the creation of cluster development fees will be imposed.

307. Table of Use Regulations.		GROWTH AREAS						RURAL AREAS		
		DT Downtown	U Urban	N Neighborhood	C Commercial	CP Commerce Park	I Industrial	BP Business Park	R Rural	DW Drinking Water
RESIDENTIAL/LODGING										
Accessory Dwelling		Y	Y	Y	Y	N	N	Y	Y	Y
Boarding House/Congregate Housing/Assisted Living Facility		Y	Y	Y	N	N	N	N	Y	N
Campground		N	Y	N	N	N	N	N	Y	N
Campsite		N	Y	Y	Y	N	N	N	Y	Y
Dwelling	Single Family Detached/Attached	Y	Y	Y	N	N	N	N	Y	Y
	Multi-Family - 3 to 6 units	Y	Y	Y	Y	N	N	N	Y	Y
	Multi-Family - 7 or more units	Y	Y	Y	Y	N	N	N	N	N
Homeless Shelter		Y	Y	Y	N	N	N	N	Y	N
Mobile Home		N	Y	Y	Y	N	N	N	Y	Y
Mobile Home Park		N	Y	N	N	N	N	N	Y	N
Lodging	Bed and breakfast	Y	Y	Y	Y	N	N	N	Y	Y
	Hotel/motel	Y	Y	N	Y	N	N	N	Y	Y
INSTITUTIONAL, SOCIAL & PUBLIC SERVICES/FACILITIES										
Business and Trade School		Y	Y	Y	N	Y	Y	Y	Y	Y
Cemetery, private		N	Y	Y	N	N	N	N	Y	Y
Day Care		Y	Y	Y	Y	N	Y	N	Y	Y
Educational Institution		Y	Y	Y	N	N	Y	N	Y	Y
Religious Institution		Y	Y	Y	N	N	N	N	Y	Y
Special Uses		Y	Y	Y	Y	Y	Y	Y	Y	Y
Telecommunication Tower		N	Y	Y	Y	N	Y	Y	Y	Y

307. Table of Use Regulations - continued	GROWTH AREAS							RURAL AREAS	
	DT Downtown	U urban	N Neighborhood	C Commercial	CP Commerce Park	I Industrial	BP Business Park	R Rural	DW Drinking Water
RURAL/RECREATION									
Agricultural Activity	N	Y	Y	N	N	N	N	Y	Y
Boat Launch, Private and/or Commercial	N	N	N	N	N	N	N	N	N
Boat Launch, Public	Y	N	Y	N	N	N	N	Y	Y
Feedlot, Agricultural	N	N	Y	N	N	N	N	Y	N
Golf Course	N	N	Y	N	N	N	N	Y	N
Junkyard	N	N	N	N	N	Y	N	Y	N
Landing Area	N	N	N	N	N	N	N	Y	Y
Marina	Y	N	Y	N	N	N	N	Y	N
Mineral Extraction	N	N	N	N	N	Y	N	Y	N
Sawmill	N	N	N	N	N	Y	Y	Y	N
Stable	N	N	Y	N	N	N	N	Y	Y
Timber Harvesting	N	Y	Y	Y	Y	Y	Y	Y	Y
COMMERCIAL/INDUSTRIAL USES									
Agriculture and Processing, Commercial	Y	N	N	N	Y	Y	Y	Y	Y
Animal Hospital	N	Y	N	Y	N	Y	N	Y	N
Automobile Sales, Repair, and Leasing - Major	N	Y	N	Y	N	Y	Y	N	N
Automobile Sales, Repair, and Leasing - Minor	Y	Y	N	Y	N	Y	Y	Y	Y
Bulk Storage	N	N	N	N	N	Y	Y	Y	Y
Bulk Tank Facility	N	N	N	Y	N	Y	Y	N	N
Commercial Use	Y	Y	N	Y	N	Y	Y	Y	Y
Convenience Store	Y	Y	Y	Y	N	N	N	Y	Y
Custom Manufacturing	Y	Y	Y	Y	Y	Y	Y	Y	Y
Equipment Sales and Rental	N	Y	N	Y	N	Y	Y	Y	Y
Gas Station	Y	Y	N	Y	N	Y	N	Y	N
Industrial Service	Y	Y	N	Y	N	Y	Y	Y	Y
Industry, Heavy	N	N	N	N	N	Y	Y	N	N
Industry, Light	N	Y	N	Y	Y	Y	Y	Y	Y

307. Table of Use Regulations - continued		GROWTH AREAS						RURAL AREAS		
		DT Downtown	U urban	N Neighborhood	C Commercial	CP Commerce Park	I Industrial	BP Business Park	R Rural	DW Drinking Water
Laboratory, Research, and Development Facility		Y	Y	N	Y	Y	Y	Y	Y	N
Personal Service Establishment		Y	Y	Y	Y	Y	Y	Y	Y	Y
Medical Marijuana Primary Caregiver Operation (cultivation, production, dispensing, and all related activities) Outside the Primary Residence and collectives		N	N	N	N	N	N	N	N	N
Processing, Fish Wholesale		Y	N	N	N	Y	Y	Y	Y	Y
Professional Establishment		Y	Y	Y	Y	Y	Y	Y	Y	Y
Restaurant/Bar and/or Cocktail Lounge		Y	Y	N	Y	N	N	N	Y	Y
Shopping Center	Small	N	Y	N	Y	N	N	N	Y	N
	Community	N	Y	N	Y	N	N	N	N	N
	Big Box	N	N	N	Y	N	N	N	N	N
Warehouse		N	Y	N	Y	N	Y	Y	Y	Y

308. DIMENSIONAL REQUIREMENTS. The following table shall govern dimensional requirements in the various zoning districts:

Table of Dimensional Requirements									
Zoning Districts	Minimum Lot Size (square feet)	Minimum Road Frontage (feet)	Minimum Lot Width (feet)	Minimum Building Setback			Maximum Height (feet)	Units per Acre	Other Requirements
				Front (feet)	Side (feet)	Back (feet)			
Downtown (DT)	NA	NA	NA	*No front setback requirements except buildings fronting on Main Street between the Union River and High Street shall have a minimum building height of 25 ft with 0 ft front setback (built at the property line) and a maximum building height of 60 ft. Building with a height greater than 25 ft shall benefit from an enclosure ratio of 1:1.5	0	0	*Maximum height of 48 ft except for buildings Main Street between the Union River and High Street shall have a minimum building height of 25 ft with 0 ft front setback (built at the property line) and a maximum building height of 60 ft. Building with a height greater than 25 ft shall benefit from an enclosure ratio of 1:1.5.	NA	1. Lot Landscaping 2. Focus on parking lot location Ch. 56 section 1102.5 and on Cross Access Ch. 56 Section 910.4. 3. Drive-in facilities shall be located behind the building and pedestrian circulation shall be protected from auto traffic.
Urban (U)	10,000	18	100	NA	5	5	60	NA	
Neighborhood (N)	20,000	50	100	20	10	20	NA	10	
Industrial (I)	0	0	100	0	0	0	65	NA	
Business Park (BP)	0	0	100	0	0	0	65	NA	
Rural (R)	40,000	50	100	20	15	15	35	6	
Drinking Water (DW)	80,000	50	100	50	15	20	48 feet except that there is a side and rear setback enclosure ratio of 10:1 for every foot of height over 35 feet.	0.5	
Commerce Park (CP)	40,000	100	100	40	20	20	65	NA	
Commercial (C)	20,000	100	100	0	10	10	65	NA	75 % maximum impervious surface

*Exempts single family attached and detached

Projects shall meet State law for minimum lot size or requirements for smaller lots, and for subsurface wastewater disposal

Setbacks apply to structures, accessways excluding driveways, parking lots and stormwater retention facilities.

The minimum frontage for a lot serviced by a subsurface wastewater disposal system is 100 feet.

An access serving two houses or less is referred to as a residential driveway and minimum road frontage does not apply.

Special Uses have to meet setbacks but do not have to meet the lot size

Enclosure Ratio is the ratio of building height to the distance between building and the center of the right-of-way; for every foot of height you get 1.5 foot of setback.

309. WELL OVERLAY ZONE

309.1 Description and Purpose. The Well Overlay Zone encompasses properties having bedrock drinking water wells which have been demonstrated by the Maine Department of Environmental Protection to be impacted by hazardous substances. The intent of this overlay zone is to restrict bedrock ground water use and land use per the July 10, 2009, Portland-Bangor Waste Oil Company Site agreement between the City of Ellsworth and the Maine Department of Environmental Protection. The Well Overlay Zone consists of two separate and distinct areas referred to as Well Area A: Bedrock Well Restricted Area and Well Area B: Bedrock Well Treatment Area.

309.2 Uses in **Well Area A: Bedrock Well Restricted Area** shall be regulated as follows:

- A. Bedrock water users are required to connect to the Ellsworth public water system.
- B. Drilling for, or use of, bedrock ground water for any means, including residential wells is prohibited.
- C. Commercial blasting as part of any quarrying or mining operation is prohibited
- D. Bedrock ground water may be withdrawn for sampling to assess water quality by scientific analysis only from wells still in existence prior to July 10, 2009.
- E. Bedrock ground water may be withdrawn from wells installed on or after July 10, 2009, as part of a Maine Department of Environmental Protection hydrogeologic study or a City of Ellsworth approved hydrogeologic study.
- F.

309.3 Uses in **Well Area B: Bedrock Well Treatment Area** shall be regulated as follows: drilling for, or use of, bedrock groundwater for any means including residential wells is allowed but:

- A. All bedrock wells, both commercial and residential, must install a Point-of-Entry Treatment Systems(POETS) such as an activated carbon filter to ensure water-born, site-related contaminants are not ingested, discharged to a septic system, or otherwise discharged to the ground.
- B. The City of Ellsworth shall provide on a “first come, first serve basis” one (1) POETS per lot in existence as of April 1, 2009 unless such lot is required by another Ordinance of the City of Ellsworth to connect to the Ellsworth public water system. Any additional POETS shall be the responsibility of the property owner(s).

- C. Water extracted from any bedrock wells on any one parcel shall be limited to a maximum usage rate of 500 gallons per day.
- D. Water extraction from any bedrock well on any one parcel with a usage to exceed 500 gallons per day requires review by the Planning Board. The Planning Board shall determine whether the applicant has adequately demonstrated that the increased usage will not cause contaminated ground water to spread beyond Well Areas A and B.
- E. Commercial blasting as part of any quarrying or mining operation is prohibited.

**City of Ellsworth
Chapter 56
Unified Development Ordinance**

**Article 4
Shoreland Zoning**

*Adopted June 15, 2009 – Effective July 1, 2009
Amended August 17, 2009
Amended April 19, 2010
Incorporated into Ch. 56 Unified Development Ordinance on June 18, 2012
Amended November 19, 2012*

Attest:

City Clerk
Heidi-Noel Grindle

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City of Ellsworth Chapter 56 Unified Development Ordinance

401 Shoreland Zoning Purposes and Applicability

401.1 **Purposes.** The purposes of this Article are to:

- A. Further the maintenance of safe and healthful conditions;
- B. Prevent and control water pollution;
- C. Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- D. Protect buildings and lands from flooding and accelerated erosion;
- E. Protect archaeological and historic resources;
- F. Protect commercial fishing and maritime industries;
- G. Protect freshwater and coastal wetlands;
- H. Control building sites, placement of structures and land uses;
- I. Conserve shore cover, and visual and actual points of access to inland and coastal waters;
- J. Conserve natural beauty and open space; and
- K. Anticipate and respond to the impacts of development in shoreland areas.

401.2 **Authority.**

This Article has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

401.3 **Applicability.**

- A. Within the City of Ellsworth, this Article applies to all land areas within 250 feet, horizontal distance, of:
 - i. The normal high-water line of any great pond or river;
 - ii. The upland edge of a coastal wetland, including all areas affected by tidal action; or
 - iii. The upland edge of a freshwater wetland; and
- B. This Article also applies to all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream as defined and/or as identified on the Official Land Use Map for the City of Ellsworth.
- C. This Article also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

402 Authority, Administration and Legal Provisions

402.1 Effective Date.

A. This Article and future amendments, which are adopted by the Ellsworth City Council on May 17, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection (DEP). A certified copy of the Article, or Amendment, attested and signed by the City Clerk, shall be forwarded to the Maine DEP Commissioner for approval. If the Commissioner fails to act on this Article or Amendment, within 45 days of the DEP Commissioner's receipt of the Article, or Amendment, it shall be automatically approved.

Any application for a permit submitted to the City of Ellsworth within the above mentioned 45-day period shall be governed by the terms of this Article, or Article Amendment, if the Article, or Article Amendment, is approved by the Commissioner.

B. **Section 410.13.** Section 410.13 is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time 410.13-1 shall become effective. Until such time as Section 410.13 is repealed, 410.13-1 is not in effect.

NOTE: The statutory date established under 38 M.R.S.A. section 438-B(5) is the effective date of statewide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the statewide standards." 38 M.R.S.A. section 438-B(5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the statewide standards."

402.2 Availability.

A certified copy of this Article shall be filed with the City Clerk and shall be accessible to any member of the public. This Article shall also be posted on the City of Ellsworth web site. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Article shall be posted.

402.3 Severability.

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

402.4 Conflicts with Other Ordinances.

Whenever a provision of this Article conflicts with or is inconsistent with another provision of this Article or of any other ordinance, regulation or statute administered by the City of Ellsworth, the more restrictive provision shall control.

402.5 **Amendments.** Refer to and use City of Ellsworth Code of Ordinance, Chapter 19 – Land Use Ordinance, Article VIII Amendments Procedures. In addition to the procedures set forth in Chapter 19, copies of amendments, attested and signed by the Ellsworth City Clerk, shall be submitted to the DEP Commissioner of the Department of Environmental Protection following adoption by the Ellsworth City Council and shall not be effective unless approved by the DEP

Commissioner. If the DEP Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the City of Ellsworth within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

403 Shoreland Zoning Administration

403.1 **Administration.** This Article shall be administered in general by the Planning Board or the Code Enforcement Officer, referred herein as *the Administrator* and described below:

- A. **The Code Enforcement Officer (CEO)** shall administer projects requiring CEO or LPI approval per Table 408.8 - Land Uses in the Shoreland Zone. A CEO shall be appointed or reappointed annually by July 1st.
- B. **The Planning Board (PB)** shall administer projects requiring PB approval per Table 408.8 - Land Uses in the Shoreland Zone. The PB shall operate in accordance with the provisions of Ellsworth Code of Ordinances Chapter 18 and State law.

The City Planner and its designee(s) represent the Planning Board and are responsible to provide guidance to the applicant whose project requires Planning Board Review.

- C. **Board of Appeals (BOA)**. The BOA operates in accordance with the provisions of Ellsworth Code of Ordinances Chapter 38 and 30-A M.R.S.A. section 2691.

403.2 **Permits Required.** After the effective date of this Article, no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Article shall have a copy of the permit on site while the work authorized by the permit is performed.

Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

- A. **Culverts Exemption.** A permit is not required for the replacement of an existing private accessway culvert if the conditions listed below are met. However, the CEO shall be notified before the replacement of any culvert. The CEO will notify the Water Dept. of any projects in the Branch Lake watershed:
 - i. The replacement culvert is not more than 25% longer than the culvert being replaced;
 - ii. The replacement culvert is not longer than 75 feet; and
 - iii. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. See 409.18 for standards.
- B. **Archaeological Excavation Exemption.** A permit is not required for an archaeological excavation as long as it is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

403.3 **Permit Application Requirements.**

- A. Application Form. Every applicant for a permit shall submit a written application on a form provided by the City of Ellsworth, with a scaled site plan, to the Administrator per Table 408.8 - Land Uses in the Shoreland Zone.
- B. Right, Title and Interest. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- C. Date. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- D. Sewage Disposal Provisions. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

403.4 **Procedure for Administering Permits.**

Application Receipt. Within 35 days of the date of receiving a written application, the Administrator or designee shall notify the applicant in writing either that the application is a complete application; or if the application is incomplete, shall specify additional material that is needed to make the application complete.

Application Period. The Administrator shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Article.

Planning Board Applications. Applications that require Planning Board Review per this Article shall follow the general procedures in the City of Ellsworth Land Use Ordinance and/or UDO Section 208.

Burden of Proof. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article.

Decision/Findings. After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover, visual and actual, points of access to inland and coastal waters;

- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 409, Land Use Standards and Section 410 Performance Standards in the Shoreland Zone.

Conditions in Writing. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.

Other Provisions May Apply. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other Ordinance, or regulation or statute administered by the City of Ellsworth.

403.5 **Special Resource Protection Zoning Districts (RP) Exceptions.** In addition to the criteria specified in Section 403.4 above, excepting structure shoreline setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection Zoning District (RP) provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the RP, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the Hancock County Registry of Deeds before the adoption of the RP encompassing the lot.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps for the City of Ellsworth; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable Ellsworth Floodplain Ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed

building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

- 403.6 **Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
- 403.7 **Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all City permits required under this Article, any other Ordinance, or any previous Ordinance of the City of Ellsworth has been issued by the CEO or other written arrangements have been made between City of Ellsworth officials and the utility.

404 Shoreland Zoning Appeals

- 404.1 **The Board of Appeals (BOA):** The BOA shall have the following powers and duties:
- A. **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Article; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his/her review of and action on a permit application under this Article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Article is not appealable to the BOA.
 - B. **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Article.
- 404.2 **Variance Appeals.** Variances may be granted only under the following conditions:
- A. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
 - B. Variances shall not be granted for establishment of any uses otherwise prohibited by this Article.
 - C. The Board shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Sections 409 and 410 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Article would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
 - D. Notwithstanding Section 404.2 C(ii) above, the BOA may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability

who resides in or regularly uses the dwelling. The BOA shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The BOA may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- E. The BOA shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Article to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- F. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the CEO to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the BOA. Any comments received from the Commissioner prior to the action by the BOA shall be made part of the record and shall be taken into consideration by the BOA.

404.3 **Administrative Appeals**

When the BOA reviews a decision of the Code Enforcement Officer the BOA shall hold a “de novo” hearing. At this time the BOA may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the BOA shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the BOA hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Article or contrary to the facts presented to the Planning Board. The BOA may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the BOA may receive and consider written or oral arguments. If the BOA determines that the record of the Planning Board proceedings is inadequate, the BOA may remand the matter to the Planning Board for additional fact finding.

404.4 **Appeal Procedure**

A. **Making an Appeal:**

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 404.1(A) above. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the 30-day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

- b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or City Planner on behalf of the Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.

B. Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within 7 days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the City Council.

404.5 Appeal to Superior Court.

Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within 45 days from the date of any decision of the Board of Appeals.

404.6 Reconsideration of Appeals.

In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision.

Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

405 Shoreland Zoning Enforcement

405.1 **Nuisances.** Any violation of this Article shall be deemed to be a nuisance.

405.2 **Code Enforcement Officer (CEO).** The CEO shall have the following powers and duties:

- A. **Enforcement.** It shall be the duty of the CEO to enforce the provisions of this Article.
- B. **On-Site Inspections.** The CEO shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate all complaints of alleged violations of this Article.
- C. **Notice of Violation** If the CEO shall find that any provision of this Article is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the City Manager and City Council and be maintained as a permanent record.
- D. **Records Kept.** The CEO shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

405.3 **Legal Actions.**

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Ellsworth City Council, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Article in the name of the City of Ellsworth.

The City Council, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Ellsworth official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

405.4 **Fines.**

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Article shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

406 Non-conformance in the Shoreland Zone.

406.1 **Purpose.** It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 406. Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming.

406.2 **Non-conformance, General.**

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Article.
- (2) **Repair and Maintenance.** This Article allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or City building and safety codes may require.

406.3 **Non-conforming Structures**

- (1) **Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.
 - (a) Legally existing non-conforming principal and accessory structures that do not meet the shoreline setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Article are met.
 - i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.
 - ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.
 - iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.
 - iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, the maximum combined

total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 406.3(1)(a), a basement is not counted toward floor area.

- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing his/her decision on the criteria specified in Section 406.3(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure, it shall not be considered to be an expansion of the structure.
- (1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 406.3(1)(a)(iii) and Section 406.3(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.
- (a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
 - (b) A well-distributed stand of trees and other natural vegetation as defined in Section 410.14(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of Section 410.14(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or the Code Enforcement Officer, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.
 - (c) Adjacent to great ponds and rivers flowing to great ponds, except for the allowable footpath, there exist complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.
 - (d) A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.

- (i) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.
 - (ii) Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.
- (1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) when the vegetation matures within the 50-foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than 3 feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or the Code Enforcement Officer, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.
- (2) Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all shoreline setback requirements to the greatest practical extent as determined by the Code Enforcement Officer, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the shoreline setback to the greatest practical extent, the CEO shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the shoreline setback area in order to relocate a structure, the CEO may require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, 3 feet in height, for every tree removed. If more than 5 trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the shoreline setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- (3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the shoreline setback requirement to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Article. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required shoreline setback it shall not be any larger than the original structure, except as allowed pursuant to Section 406.3(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required shoreline setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the shoreline setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation may be replanted in accordance with Section 406.3(2) above.

Any non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the CEO within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the shoreline setback to the greatest practical extent the CEO shall consider, in addition to the criteria in Section 406.3(2) above, the physical condition and type of foundation present, if any.

- (4) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management,

archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

406.4 Non-conforming Uses.

- (1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 406.3(1) above.
- (2) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding 5 year period.
- (3) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 406.3(4) above.

406.5 Non-conforming Lots

- (1) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Article or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Article except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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

- (3) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Article, if any of these lots do not individually meet the dimensional requirements of this

Article or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 12, 1992 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 406.5(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

407 Shoreland Zoning Districts and the Land Use Map

- 407.1 **Official Land Use Map.** The areas to which this Article is applicable are hereby divided into the following districts as shown on the Official Land Use Map which is made a part of this Article:
- | | |
|----------------------------------|-----------------------------|
| A. Resource Protection (RP) | D. Limited Residential (LR) |
| B. Drinkingwater Protection (DP) | E. Limited Commercial (LC) |
| C. Stream Protection (SP) | F. General Development (GD) |
- 407.2 **Scale of Map.** The Official Land Use Map shall be available at a scale of not less than one inch equals 2000 feet (1" = 2000'). Zoning district boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.
- 407.3 **Certification of Official Land Use Map.** A one inch equals 2000 feet (1" = 2000') copy of the Official Land Use Map shall be certified by the attested signature of the Ellsworth City Clerk and shall be located in the Code Enforcement Office and in the City Planner's Office.
- 407.4 **Changes to the Official Land Use Map.** If amendments, in accordance with this Article, are made in the boundaries of the Shoreland Zone or other shoreland zoning matter portrayed on the Official Land Use Map, such changes shall be made on the Official Land Use Map within 30 days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.
- 407.5 **Interpretation of Shoreland Zoning District Boundaries.** Unless otherwise set forth on the Official Land Use Map, district boundary lines are property lines, the centerlines of accessways, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location, except, when applicable, a landowner complies with Section 407.6 Verification of Habitat Value.

407.6 **Verification of IF&W Determination of Waterfowl and Wading Bird Habitat Value.**

- (1) Following the review of existing Maine Department of Inland Fisheries and Wildlife (IF&W) data and/or new documentation submitted to the IF&W regarding a moderate or high value habitat, the IF&W may modify the rating or boundary of the habitat. A landowner submitting documentation will receive a written determination from either the IF&W or the Maine Department of Environmental Protection (DEP). Upon determination that the habitat rating or boundary has changed, the landowner may then proceed to request an amendment to the Land Use Map by contacting the City Planner. Determination of habitat rating or boundary may be done by any of the following methods:
 - (a) **Desktop Review.** A re-examination by the DEP of the aerial photography and other GIS data available may be sufficient documentation for determination. Should DEP find evidence that the habitat rating or boundary should be change, DEP will submit documentation to IF&W for determination.
 - (b) **Field Verification by Department of Environmental Protection (DEP).** A landowner may submit to the DEP evidence that the wetland rating or boundary is incorrect, such as photographs showing that the wetland is either not a wetland as defined by this Article or is an altered wetland. Should the evidence be convincing that the rating or boundary may be incorrect, the DEP may then conduct a field visit using the criteria in Section 407.6(1)(d). Following a field visit, DEP will write an advisory opinion regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination
 - (c) **Field Verification by a professional.** A landowner may submit documentation regarding the presence of absence of a wetland with a moderate or high value to the IF&W for determination. Such Documentation must be completed by an individual who has experience and training in either wetland ecology or wildlife ecology and therefore has qualifications sufficient to identify and document a moderate or high value habitat based on the criteria in Section 407.6(1)(d).
 - (d) **Moderate and high value habitat criteria.** A moderate or high value inland habitat is an inland wetland complex, and a 250-foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersion, and percent open water, meets the IF&W guidelines or is an inland wetland complex that has documented outstanding use of waterfowl or wading birds. Determination of moderate or high value habitat is based on the following:
 - i. Dominant wetland type is rated by the assigned score for the wetland type of greatest area in the wetland. Wetland type is determined using the classification system published by IF&W based on McCall, 1972, for waterfowl and wading bird habitat rating. A score for the value to waterfowl and wading birds is assigned to each type using the IF&W rating procedure; and/or
 - ii. Wetland diversity is rated by assigning the wetland to one of the diversity categories based on the number of wetland types present in the wetland using the IF&W rating procedure; and/or
 - iii. Wetland size is rated by assigning the wetland to one of three size categories based on the total area of the wetland using the IF&W rating procedure; and/or
 - iv. Wetland type interspersion is rated by assigning the wetland to one of three interspersion categories using the Golet (1974) system, as modified for Maine in the IF&W rating procedure; and/or
 - v. Percent open water is rated by assigning the wetland one of four categories, based on the percent of the wetland in open water using the IF&W rating procedure.

NOTE: The following are literature citations as referenced above:

McCall, C.A. 1972. Manual for Maine wetlands inventory. Maine Department of Inland Fisheries and Game, Augusta, Maine. 38pp.

Golet, F.C., and J.S. Larson. 1974. Classification of freshwater wetlands in the glaciated northeast. Resource Publication 116. U.S. Dept. of the Interior, Washington, D.C. 56pp.

408 Establishment of Shoreland Zoning Districts

408.1 **The Resource Protection District (RP)** includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed or in the General Development District need not be included within the Resource Protection District.

- (1) **Rated Wetlands.** Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (IF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either IF&W or the DEP as of January 1, 1973 for Coastal Wetlands and as of December 31, 2008 for Freshwater Wetlands. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
- (2) **Floodplains** along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps for the City of Ellsworth, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (3) **Steep Slopes.** Areas of 2 or more contiguous acres with sustained slopes of 20% or greater.
- (4) **Hydric Soils.** Areas of 2 or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.
- (5) **Erodable Areas.** Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- (6) **Significant Natural Areas.** Areas designated by federal or state government or the City of Ellsworth as natural areas of significance to be protected from development; and
- (7) **Other significant areas** which should be included in this district to fulfill the purposes of this Article, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the City of Ellsworth after consultation with the Maine Historic Preservation Commission.

- 408.2 **The Drinkingwater Protection District (DP)** includes all areas that lie within the Shoreland Zone of the watershed of Branch Lake that are not zoned Resource Protection. The DP zoning district has lot size, frontage and other environmental standards designed to protect Ellsworth's public drinking water supply. For regulation of surface water activities on Branch Lake, refer to the Ellsworth Code of Ordinances Chapter 55 Public Water Supply Protection Ordinance.
- 408.3 **The Stream Protection District (SP)** includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, or river, or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.
- In addition to streams as defined, all perennial and intermittent streams within the watershed of Branch Lake have a 75-foot shoreland zone and are designated Stream Protection District as shown on the Official Land Use Map.
- 408.4 **The Limited Residential District (LR)** includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the General Development District and Limited Commercial District.
- 408.5 **The Limited Commercial District (LC)** includes areas of mixed, light commercial and residential uses exclusive of the Stream Protection District, which should not be developed as intensely as the General Development District. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses.
- 408.6 **The General Development District (GD)** includes the following types of existing, intensively developed areas:
- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
 - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - (c) Areas devoted to intensive recreational development consistent with the Ellsworth Waterfront Master Plan and Waterfront Redevelopment Plan.
 - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.
- 408.7 **The Shoreland Zoning Table of Land Uses.** All land use activities, as indicated in Table 408.8 Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Sections 409 and 410. The district designation for a particular site shall be determined from the Official Land Use Map.

Key to Table 408.8 Land Uses in the Shoreland Zone:

- Yes -** Allowed (no permit required but the use must comply with all applicable land use standards.)
No - Prohibited.

- PB** - Allowed with Planning Board approval, followed by CEO permit if applicable.
- CEO** - Allowed with permit issued by the Code Enforcement Officer.
- LPI** - Allowed with permit issued by the City Plumbing Inspector.

District Abbreviations on Table 408.8 – Land Uses in the Shoreland Zone:

- RP** - Resource Protection
- DP** - Drinkingwater Protection
- SP** - Stream Protection
- GD** - General Development
- LC** - Limited Commercial
- LR** - Limited Residential

TABLE 408.8 LAND USES IN THE SHORELAND ZONE	More RESTRICTIVE less					
	DISTRICT					
	RP	DP	SP	LR	LC	GD
SUMMARY OF DIMENSIONAL REQUIREMENTS						
Depth of Shoreland Zone (in feet)	250	250	75	250	250	250
LAND USE CATEGORY	DISTRICT					
	RP	DP	SP	LR	LC	GD
1. Non-intensive recreational uses w/o structures such as hunting, fishing and hiking	YES	YES	YES	YES	YES	YES
2. Motorized vehicular traffic on existing accessways/trails	YES	YES	YES	YES	YES	YES
3. Forest management activities except for timber harvesting & land mgmt. roads	YES	YES	YES	YES	YES	YES
4. Timber harvesting	CEO	YES	YES	YES	YES	YES
5. Clearing or removal of vegetation for activities other than timber harvesting <small>¹In RP not allowed within 75 feet horizontal distance, of the normal high-water line of Great Ponds, except to remove safety hazards.</small>	CEO ¹	CEO	CEO	CEO	CEO	CEO
6. Fire prevention activities	YES	YES	YES	YES	YES	YES
7. Wildlife management practices	YES	YES	YES	YES	YES	YES
8. Soil and water conservation practices	YES	YES	YES	YES	YES	YES
9. Mineral exploration	NO	NO	NO	CEO	CEO	CEO
10. Mineral extraction (including sand and gravel extract.)	NO	NO	NO	PB	PB	PB
11. Surveying and resource analysis	YES	YES	YES	YES	YES	YES
12. Emergency operations	YES	YES	YES	YES	YES	YES
13. Agricultural, Activities (as defined)	PB	NO	CEO	CEO	NO	NO
14. Agricultural, Gardening	CEO	CEO	CEO	CEO	CEO	CEO
15. Agricultural, Feed Lot	NO	NO	NO	NO	NO	NO
16. Agricultural Processing, Major	NO	NO	NO	NO	NO	NO
17. Agricultural Processing, Minor	NO	NO	NO	NO	PB	PB

TABLE 408.8 (continued)	DISTRICT					
	RP	DP	SP	LR	LC	GD
18. Processing, Fish Wholesale	NO	NO	NO	NO	PB	PB
19. Principal structures and uses						
19.1. One & two family residential and driveways	PB ²	CEO /PB ³	PB ⁴	CEO	NO	NO
<i>² Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. Two-family residential structures are prohibited.</i>						
<i>³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.</i>						
<i>⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>						
19.2. Multi-unit residential	NO	NO	NO	PB	NO	PB
19.3. Commercial	NO ⁵	NO ⁵	NO	NO ⁵	CEO ⁶	CEO ⁶
<i>⁵ Except for commercial uses otherwise listed in this Table, such as, but not limited to, marinas and campgrounds, that are allowed in the respective district.</i>						
<i>⁶ Allowed commercial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 410.4.</i>						
19.4 Industrial	NO	NO	NO	NO	NO	CEO ⁷
<i>⁷ Allowed industrial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 410.4.</i>						
19.5 Special Uses, except as otherwise prohibited by this article	PB	PB	PB	PB	PB	PB
19.6 Government and Institutional	NO	PB	NO	PB	PB	PB
19.7. Small non-residential facilities for educational, scientific, or nature interpretation	PB	PB	PB ⁴	CEO	CEO	CEO
<i>⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>						
20. Structures accessory to allowed uses	PB ²	CEO ³ /PB	PB ⁴	CEO	CEO	CEO
<i>² Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. Two-family residential structures are prohibited.</i>						
<i>³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.</i>						
<i>⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>						
21. Piers, docks, wharfs, bridges, boat launching facilities and other structures and uses extending over or below the normal high-water line or within a wetland						
21.1. Temporary	CEO	CEO	CEO	CEO	CEO	CEO
21.2. Permanent, private - ⁸ See 410.1	PB ⁸	PB ⁸	PB ⁸	PB ⁸	PB ⁸	PB ⁸
21.3. Permanent, commercial - ⁸ See 410.1	NO	NO	PB ⁸	PB ⁸	PB ⁸	PB ⁸
21.4. Permanent, public facility - ⁸ See 410.1	NO	PB ⁸	PB ⁸	PB ⁸	PB ⁸	PB ⁸
22. Conversions of seasonal residences to year-round	LPI	LPI	LPI	LPI	LPI	LPI
23. Home occupations	PB	PB	PB	PB	CEO	CEO

24. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI
TABLE 408.8 (continued)	DISTRICT					
LAND USE CATEGORY	RP	DP	SP	LR	LC	GD
25. Essential services						
25.1. Distribution	CEO ⁹	YES ¹⁰	CEO ⁹	YES ¹⁰	YES ¹⁰	YES ¹⁰
25.2. Transmission	PB ⁹	PB	PB ⁹	PB	PB	PB
25.3. Facilities	PB ⁹	NO	PB ⁹	PB	PB	PB
<i>⁹Except buildings which shall not be permitted in the RP or SP unless a variance from shoreline setback is granted. See further restrictions in Section 410.10.</i>						
<i>¹⁰Permit not required but must file a written "Notice of Intent to Construct" with CEO.</i>						
26. Service drops, as defined, to allowed uses	YES	YES	YES	YES	YES	YES
27. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB	CEO	CEO
28. Campgrounds	NO	NO	NO	PB	NO	NO
29. Campsite, private individual. See 410.3	PB	PB	CEO	CEO	NO	NO
30. Accessway, consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles						
30.1. Construction of an accessway of more than 500 ft. <i>¹¹Except as provided in Section 410.6.</i>	NO ¹¹	PB	PB	PB	PB	PB
30.2. Construction of an accessway of less than 500 ft.	PB	CEO	PB	CEO	CEO	CEO
31. Land management roads	PB	YES	YES	YES	YES	YES
32. Parking Lot	NO	PB	PB	PB	PB	PB
33. Marinas	NO	NO	NO	PB	NO	PB
34. Filling and earth moving of <10 cubic yards	CEO	CEO	CEO	YES	YES	YES
35. Filling and earth moving of >10 cubic yards	PB	CEO	PB	CEO	CEO	CEO
36. Creation of more than 20,000 s. f. of shoreland lot coverage area (in the aggregate) on one lot.	PB	PB	PB	CEO	CEO	CEO
37. Signs	CEO	CEO	CEO	CEO	CEO	CEO
38. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO
39. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB
40. Uses similar to allowed uses	CEO to determine level of review needed					

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to a natural resource including but not limited to freshwater or coastal wetland, great pond, river, stream or tributary stream and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

409 Land Use Standards in the Shoreland Zone (SZ)

All land use activities within the SZ shall conform to the following provisions, where applicable.

- 409.1 **General Land Use Requirements.** No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created, except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.
- 409.2 **Minimum Lot Standards:** All land use activities within the shoreland zone shall conform with the following provisions when applicable:

TABLE 409.2 Minimum Lot Area and Shore Frontage within the Shoreland Zone (SZ)

Residential Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD Zoning District	10,000 per dwelling unit	100 per dwelling unit
Tidal Areas in the LR Zoning District	40,000 per dwelling unit	150 per dwelling unit
Non-Tidal Areas except DP, SP & RP Districts	40,000 per dwelling unit	200 per dwelling unit
Governmental, Institutional, Commercial or Industrial Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD Zoning District	10,000 per principal structure	100 per principal structure
Tidal Areas in the LR Zoning District	40,000 per principal structure	200 per principal structure
Non-tidal areas except DP, SP & RP District	60,000 per principal structure	300 per principal structure
Public or Private Recreational Facilities:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
All SZ Areas except the DP & RP Zoning District	40,000 per principal structure	200 per principal structure
All Uses in:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
All Areas of DP Zoning District	90,000/unit or princ. structure	300/unit or princ. structure
All Areas of SP* & RP* Zoning District	Apply lot and structure requirements of the most restrictive adjacent zoning district.	

*Structure permitting in RP and SP is very limited. See provisions in Sections 408, 409 and 410.

- A. **Minimum Lot Area.** Land below the normal high-water line of a water body or upland edge of a wetland and land beneath accessways serving more than 2 lots shall not be included toward calculating minimum lot area.
- B. **Lots Split by Accessways.** Lots located on opposite sides of a public or private accessway shall be considered each a separate tract or parcel of land unless such accessway was established by the owner of land on both sides thereof after September 22, 1971.
- C. **The Minimum Width** of any portion of any lot within 100 feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- D. **Multiple Uses.** If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

409.3 **Structure Standards:**

- A. General Structure Setback. All new principal and accessory structures shall be constructed according to the requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone below.
- B. Resource Protection District Shoreline Setback requirements shall be 250 feet, horizontal distance from the shoreline, except for structures, accessways, or other regulated objects specifically allowed in that district in which case the setback requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone below shall apply.

TABLE 409.3 Structure and Lot Standards within the Shoreland Zone

STANDARD:	Shoreland Zoning Districts Dimensions in feet					
	RP*	DP	SP*	LR	LC	GD
Minimum structure shoreline setback from the normal high-water line of great ponds and rivers, as defined.	100*	100	n/a	100	100	25
Minimum structure shoreline setback from fresh water bodies (other than above) tributary streams, tidal water bodies or the upland edge of a wetland, as defined.	75*	75	75*	75	75	25
Minimum structure setback from the edge of a right-of-way.	20*	20	20*	20	20	20
Minimum structure setback from a property line, as defined.	25*	25	25*	15	10	10
Minimum lot frontage along the edge of a right-of-way	200	200	200	150	200	100
Maximum height of a structure, as defined.	35*	35	35*	35	35	45
Maximum shoreland lot coverage as defined below.	20%	20%	20%	20%	20%	70%

**Structure permitting in RP and SP is very limited. See provisions in Sections 408, 409, and 410.*

- C. Structure Shoreline Setback Exceptions. The shoreline setback provision shall not apply to structures of functionally water-dependent uses, as defined.
- D. Structure Shoreline Setbacks near Coastal Bluffs. For principal structures, shoreline setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map a copy of which is available in the Ellsworth Code Office. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
- E. Structure Height. Principal or accessory structures and expansions of existing structures shall not exceed the heights listed in Table 409.3 Structure and Lot Standards within the Shoreland Zone. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

- F. Floodplain Elevation. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. However, accessory structures, as defined, may be placed in accordance with the standards of the Ellsworth Floodplain Management Ordinance even if they do not meet the elevation requirements of this paragraph.
- G. Shoreland Lot Coverage: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed the requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone above for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.
- H. Retaining Walls that are not necessary for erosion control shall meet the structure shoreline setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
 - (b) The wall is at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (d) The total height of the wall(s), in the aggregate, is no more than 24 inches;
 - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps for the City of Ellsworth, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
 - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the shoreline setback area, including patios and decks; and
 - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

- i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - iii. Only native species may be used to establish the buffer area;
 - iv. A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - v. A footpath not to exceed the standards in Section 410.14(2)(a) may traverse the buffer;
- I. Shoreline Access. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

410 Performance Standards in the Shoreland Zone

410.1 Piers, Docks, Wharves, Bridges, Boat Launching Facilities, and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than 6 feet for non-commercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

- (8) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (9) Boat launches and ramps shall only be permitted as permanent public or quasi-governmental facilities. All public and quasi-governmental trailer-able boat launching facilities providing access to Branch Lake shall comply with the following requirements:
 - (a) The facility shall be gated and locked during off-hours.
 - (b) The facility shall be supervised by an attendant during hours of operation.
 - (c) The facility shall be equipped with a boat wash-down facility for the sole purpose of washing down boats.
 - (d) The facility attendant shall conduct a boat inspection on all watercraft prior to entering Branch Lake.
 - (e) A boat inspection includes: a) a visual inspection of a boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants or animals are introduced into Branch Lake and b) a boat wash down.

410.2 **Campgrounds.** Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Campgrounds shall contain a minimum of 5,000 square feet of land for each site, not including accessways and driveways. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, and 100 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

410.3 **Campsites, Individual Private.** Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- A. One campsite per lot existing on the effective date of this Article, or one campsite per 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. A maximum of four campsites not to exceed a combined total of 20 individuals may be permitted on any one lot. If there is more than one campsite per lot each campsite shall have a minimum of 30,000 square feet.
- B. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond or river flowing to a great pond, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

- D. The clearing of vegetation for the siting of a recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
- E. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the City Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

410.4 **Commercial and Industrial Uses.** The following new commercial and industrial uses, and similar uses, are prohibited within the shoreland zone adjacent to great ponds and rivers and streams which flow to great ponds:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

410.5 **Parking Lots**

- (1) Parking lots shall meet the shoreline setback requirements for structures for the district in which such lots are located. The shoreline setback requirement for parking lots serving public boat launching facilities in Districts other than the General Development District shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking lots shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking lots, parking and loading provisions of the Ellsworth Land Use Ordinance shall be applied.

410.6 **Accessways.** See Ellsworth Code of Ordinances Chapter 56 Article 9 Street Design and Construction Standards and Article 10 Storm Water Management, Design and Construction

Standards for standards that apply to the construction of accessways and drainage systems, culverts and other related features.

410.7 **Signs.** See Ellsworth Code of Ordinances Chapter 9 *Sign Ordinance* for standards to apply to the erection signs. Where a Shoreland Zone is not mentioned, provisions for the adjacent upland zone shall apply.

410.8 **Storm Water Runoff** See Ellsworth Code of Ordinances Chapter 56 Article 10 Storm Water Management, Design and Construction Standards for standards to apply all new construction and development to minimize storm water runoff from the site.

410.9 **Septic Waste Disposal**

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

- (1) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and
- (2) a holding tank is not allowed for a first-time residential use in the shoreland zone.

410.10 **Essential Services**

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.
- (4) Essential services structures must meet the shoreline setback requirements in the shoreland zoning district in which they are located.

410.11 **Mineral Exploration and Extraction.** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 410.11(3) below.

- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one 100 feet, horizontal distance, of the normal high-water line of a great pond or a river, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 50 feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period, ground levels and grades shall be established in accordance with the following:
 - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - (b) The final graded slope shall be two and one-half to one (2½: 1) slope or flatter.
 - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Article, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

410.12 **Agricultural, Activities**

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* (latest version) published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond or a river, or within 75 feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, within the shoreland zone shall require a Conservation Plan as defined to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.
- (4) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, from other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, of other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities,

and which are not in conformance with the above shoreline setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan as defined.

410.13 Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
 - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
 - (b) Beyond the 75 foot strip referred to in Section 410.13(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 ½ feet above ground level be reduced to less than 30 square feet per acre.
- (2) Except in areas as described in Section 410.13(1) above, timber harvesting shall conform with the following provisions:
 - (a) Selective cutting of no more than 40 % of the total volume of trees 4 inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any 10-year period is permitted. In addition:
 - (i) Within 100 feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to a great pond, and within 75 feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - (ii) At distances greater than 100 feet, horizontal distance, of a great pond or a river flowing to a great pond, and greater than 75 feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet, horizontal distance, apart. Such clearcut openings shall be included in

the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

- (b) Timber harvesting operations exceeding the 40% limitation in Section 410.13(2)(a) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Article. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within 14 days of the Planning Board's decision.
- (c) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
- (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
 - (i) Surface waters are frozen; and
 - (ii) The activity will not result in any ground disturbance.
- (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
 - (h) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes up to 10% shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each 10% increase in slope, the unscarified strip shall be increased by 20 feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

410.13-1. Timber Harvesting – Statewide Standards [Effective on effective date established in Section 402.1.B]

- (1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
- (2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. This section [410.13-1(2)] does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
 - (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
 - (b) Adjacent to great ponds, rivers and wetlands:
 - (i) No accumulation of slash shall be left within 100 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
 - (ii) Between 100 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted per one of the three options presented below so that a well-distributed stand of trees is retained.
 - (a) Option #1 - 40% Volume Removal, as follows:
 - (i) Harvesting of no more than 40% of the total volume on each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed. Volume may be considered to be equivalent to basal area;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest

canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

(b) Option # 2 (60 square foot basal area retention), as follows:

- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) Option #3 (Outcome based), which requires: an alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option #1 or Option #2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau of Forestry may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

- (4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 - (a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

- (b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
- (c) Setbacks:
 - (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10% or greater, the shoreline setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%. Where slopes fall away from the resource, no increase in the 25-foot shoreline setback is required.
 - (ii) Where such shoreline setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the shoreline setback requirements in Section 410.13-1(7) of this rule.
 - (a) Land management roads and associated ditches, excavation, and fill must be set back at least:
 - (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;
 - (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
 - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams
 - (b) The minimum 100-foot shoreline setback specified in Section 410.13-1(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50-foot shoreline setback specified in Section 410.13-1(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- (c) On slopes of 10% or greater, the land management road shoreline setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%.
- (d) New land management roads are not allowed in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the shoreline setback requirements in Section 410.13-1(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 410.13-1(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 410.13-1. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
- (h) Exception. Extension or enlargement of presently existing roads need not conform to the shoreline setback requirements of Section 410.13-1(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

- (6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 410.13-1: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
 - (b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 410.13-1. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 410.13-1.
 - (c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.
 - (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
 - (e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
 - (i) a map showing the location of all proposed permanent crossings;
 - (ii) the GPS location of all proposed permanent crossings;
 - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
 - (f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 410.13-16(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
 - (i) concentrated water runoff does not enter the stream or tributary stream;
 - (ii) sedimentation of surface waters is reasonably avoided;
 - (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
 - (iv) fish passage is not impeded; and,
 - (v) water flow is not unreasonably impeded.

Subject to Section 410.13-1(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

(g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

(i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10-year frequency water flows or with a cross-sectional area at least equal to 2 ½ times the cross-sectional area of the river, stream, or tributary stream channel.

(ii) Temporary bridge and culvert sizes may be smaller than provided in Section 410.13-1(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
2. removing culverts prior to the onset of frozen ground conditions;
3. using water bars in conjunction with culverts;
4. using road dips in conjunction with culverts.

(iii) Culverts utilized in river, stream and tributary stream crossings must:

1. be installed at or below river, stream or tributary stream bed elevation;
2. be seated on firm ground;
3. have soil compacted at least halfway up the side of the culvert;
4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

(iv) River, stream and tributary stream crossings allowed under Section 410.13-1, but located in flood hazard areas (i.e. A zones) as identified on a the Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) for Ellsworth, must be designed and constructed under the stricter standards contained in the National Flood Insurance Program (NFIP) for Ellsworth. For example, a water crossing may be required to pass a 100-year flood event.

(v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream

channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

- (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 410.13-1(6)(i) below.
- (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
- (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

- (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
- (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 - 1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
 - 2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or
 - 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail shoreline setbacks, and land management road shoreline setbacks must be maintained as specified in Section 410.13-1, but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent)	Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

410.14 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) Vegetation Cutting in the RP. In a Resource Protection District (RP) abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(2) Buffer Strip Preservation. Except in areas as described in Section 410.14(1), above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond or a river, and 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed 6 feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

(b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section 410.14(2)(b) a "well-distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 ½ feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Article;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Article;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 410.14(2)(b) "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any 10-year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 410.14 paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 410.14(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) Selective Cutting. At distances greater than 100 feet, horizontal distance, from a great pond or a river, and 75 feet, horizontal distance, from the normal high-water line of any other water

body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any 10-year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development Districts.

- (4) Cleared Openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Article.
- (5) Reverted Openings. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 410.14.

410.15 Erosion and Sedimentation Control

Acceptable measures shall be those specified in the Maine Erosion and Sediment Control Best Management Practices Manual (latest revision) by the DEP Bureau of Land and Water Quality and the following:

- A. Applicability. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - (i) Mulching and revegetation of disturbed soil.
 - (ii) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (iii) Permanent stabilization structures such as retaining walls or riprap.
- B. Design Provisions. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- C. All Construction Phases. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- D. Stabilization. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within 9 months of the initial date of exposure. In addition:

- (i) Where mulch is used, it shall be applied at a rate of at least one (1) 30-pound bale per 300 square feet and shall be maintained until a catch of vegetation is established.
 - (ii) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (iii) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- E. Drainageways. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

410.16 Soils. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

410.17 Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

410.18 Archaeological Site. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

410.19 Phosphorus Control. Refer to City of Ellsworth Code of Ordinance, Chapter 56, Unified Development Ordinance, Article 10. Stormwater Management Design and Construction Standards.

411 Shoreland Zoning Definitions.

Accessway - Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a residential driveway less than 500 feet in length.

Accessory Use or Structure - A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on a lot.

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

Agricultural, Activity - Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except timber harvesting); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards.

Agricultural, Gardening - Consists of agricultural activities involving tillage of soil of 40,000 square feet or less.

Agricultural, Feedlot - A lot, structure, building, or confined area used intensively for the keeping of farm animals, including but not limited to, of bovine, equine, swine, ovine, or sheep species in close quarter for the purpose of fattening for market or slaughter and where animal waste may accumulate. Does not include a barn or similar structure.

Agricultural Processing, Major - Agricultural activities involving a variety of operations on crops or livestock which may generate dust, noise, odors, pollutants, or visual impacts that could adversely affect adjacent properties. These uses include but are not limited to slaughterhouse, mills, refineries, canneries, and milk processing plants.

Agriculture Processing, Minor - Agricultural activities not regulated as major agricultural processing which involve a variety of operations on crops after harvest to prepare them for market, or further processing and packaging at a distance from the agricultural area. Included activities are cleaning, milling, pulping, drying, roasting, storing, packing, selling and other similar activities.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

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

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau - State of Maine Department of Conservation's Bureau of Forestry

Campground - A business, public or private establishment operated as a recreational site for tents, camper, trailer, and travel trailer or other forms of temporary living shelter that can accommodate two or more parties.

Campsite, Individual private - Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

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

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Conservation Plan - a customized document that outlines the use and best management practices of the natural resources on public or private lands. Typically, the plan will include land use maps, soil information, inventory of resources, engineering notes, and other supporting information.

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

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

Development - Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

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

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

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

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential Services, Distribution - Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other buildings normally, but not always, found in a street right-of-way to serve adjacent properties.

Essential services, Facilities - A building or other structure used or intended to be used by public or private utilities, including but not limited to gas tank and other storage facilities; water or sewer storage facilities; compost facility; and electrical transmission and distributions substations.

Essential Services, Transmission - Large-scale facilities serving the entire city or region such as power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors, solid waste disposal or processing facilities, excluding landfill, sewage or wastewater treatment plants, and generating facilities.

Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of use - the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Family - One (1) or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage or adoption, but not to consist of more than five (5) unrelated persons.

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

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

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

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

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

Frontage, Shore - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to dams, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings; finfish and shellfish processing; fish storage and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boat building facilities; marinas; navigation aids; basins and channels; retaining walls; industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters.

Great pond - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Article, Ellsworth's Great Ponds are: Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

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

Harvest Area - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated accessways and land management roads construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

High and moderate value waterfowl and wading bird habitat - High and moderate value waterfowl and wading bird habitats are significant wildlife habitats. Waterfowl are members of the family Anatidae including but not limited to brant, wild ducks, geese, and swans. Wading birds include but are not limited to herons, glossy ibis, bitterns, rails, coots, common moorhens, and sandhill cranes. High and moderate value waterfowl and wading bird habitats are depicted on a GIS data layer maintained by the Maine Department of Inland Fisheries and Wildlife (IF&W) and available from either IF&W or the Maine Department of Environmental Protection. The IF&W rating procedure and list of waterfowl and wading bird species was created December 22, 1993, updated September 1, 2005, and is available at IF&W offices.

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in nonconformity of a structure - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in shoreline setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the shoreline setback requirement if the expansion extends no further into the required shoreline setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

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

Institutional - a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or City-owned or -operated building, structure or land used for public purposes.

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

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

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot, minimum width, shoreland - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Coverage, Shoreland - The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Marina - A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

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

Mineral extraction - any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native - indigenous to the local forests.

Non-conforming condition - non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Article or subsequent amendment took effect.

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

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

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

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

Parking Lot: An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

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

Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of 12 consecutive months. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of 12 consecutive months.

Principal structure - a building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.

Processing, fish wholesale - The loading, unloading, packing, processing, and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

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

Recent floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvia, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

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

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system - a system intended to replace:

- 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
- 2) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Residual basal area - the average of the basal area of trees remaining on a harvested site.

Residual Stand - a stand of trees remaining in the forest following timber harvesting and related activities

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River - a free-flowing body of water including its associated floodplain wetlands. For the purposes of this Article, Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Service drop - any utility line extension which does not cross or run beneath any portion of a water body provided that: 1. in the case of electric service: a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon an accessway right-of-way; and b. the total length of the extension is less than 1,000 feet. 2. in the case of telephone service: a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or b. the extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

Setback, shoreline - the horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, accessway, parking lot or other regulated object or area.

Setback from a property line- The horizontal distance from a side or rear property line to the nearest part of a structure or other regulated object or area.

Setback from the edge of a right-of-way- The horizontal distance from a right of way to the nearest part of a structure or other regulated object or area

Shoreland zone - the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream, as defined, and/or streams mapped on the Official Land Use Map.

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

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

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

Special Use - A governmental or public service use providing public health, safety, comfort, convenience, or the general welfare for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-municipal organization, including by way of illustration, municipal buildings, schools, public parks and recreational facilities, cemetery, public art, museum, interpretation center, public parking, fire stations, ambulance services, highway garage, distribution and transmission of essential services ; essential facilities, hospital, Federal Aviation Administration –designated commercial service airport, heliport.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or a perennial or intermittent stream shown as such on the most recent edition of a United States Geological Survey 7.5 minute series topographic map and/or mapped on the Official Land Use Map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure - Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.

The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

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

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

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

Tidal waters – all waters affected by tidal action during the highest annual tide.

Timber harvesting - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 410.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

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

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

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 6 meters (approximately 20 feet) tall or taller.

Vegetation - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4½ feet above ground level.

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

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

Water body - any great pond, river or stream.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to accessways, fords, bridges, culverts, water lines, sewer lines, and cables as well

as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Wetland, forested - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, freshwater - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream, such that in a natural state, the combined surface area is in excess of 10 acres; and
- 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition

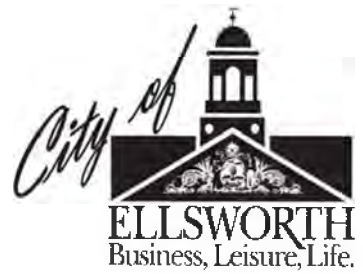
Wetland, Coastal - all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

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

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

**City of Ellsworth
Chapter 56
Unified Development Ordinance**

**Article 5
Nonconforming Uses**



ARTICLE 5 NON-CONFORMING USES

501 PURPOSE.

The purpose of this Article is to protect the rights of property owners who have lawfully established a use prior to the adoption of this ordinance or prior to any amendment to this ordinance that otherwise renders such use unlawful.

502 GENERALLY

502.1 Applicability. Applies to any nonconformity with the exception of non conformity in the Shoreland Zones which are addressed in Article 4 Shoreland Zoning section 506 Nonconformance in the Shoreland Zone. There are three categories of nonconformities, as defined in Table 502.1 Nonconformities.

Table 502.1 Nonconformities	
Situation	Definition
Nonconforming Uses	A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located.
Nonconforming Structure	A structure that was lawfully erected but that no longer complies with all the regulations applicable to the zoning district in which the structure is located.
Nonconforming Lot	A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the zoning district because of a change in the applicable zoning district regulations or a government action.

502.2 Continuation. On or after the effective date of the adoption of the Unified Development Ordinance, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this Article.

502.3 Abandonment. If a nonconforming use or site is abandoned for 24 months, any future use of such premise shall be in conformity with the provisions of this Article. Abandonment of a nonconforming use or site shall terminate the right to continue the nonconformity.

502.4 Restoration of Unsafe Property. Nothing in this Article or in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any nonconforming building or nonconforming structure declared unsafe by the Code Enforcement Officer or by the Fire Chief.

502.5 Construction Underway. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof upon which lawfully permitted construction has been initiated at the time of the adoption of this ordinance.

503 NONCONFORMING USES

- 503.1 Applicability.** This section applies to the continuation, enlargement, or expansion of a nonconforming use.
- 503.2 Continuance.** The use of any nonconforming structure may be continued. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure, except those made in conformance with the ordinance.
- 503.3 Changes to Conforming Uses.** Any nonconforming use may be changed to a use conforming with this ordinance as established for the zoning district in which the nonconforming use is located, provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use.
- 503.4 Changes to other Nonconforming Uses.** A nonconforming use may be changed to another nonconforming use after determination by the Planning Board that the new nonconforming use is more consistent with the spirit of the Unified Development Ordinance and the neighborhood.
- 503.5 Expansion of Nonconforming Uses.** The Planning Board may allow the expansion of a nonconforming use to proceed if the use was made nonconforming by the adoption of Article 3 Zoning Districts or if the use has been operating for at least 10 years prior to the adoption of Article 3 Zoning Districts. The expansion of a nonconforming use shall be on land where the nonconforming use is taking place or on a piece of land that is contiguous to the land where the nonconforming use is taking place. The Planning Board shall also determine that the expansion of the nonconforming use will not be contrary to the public interest; will not substantially or permanently injure the appropriate use of adjacent conforming property in the same zoning districts; and will not adversely affect the public health, safety, and welfare of the community.
- 503.6 Limitations.** Sections 503.3, 503.4 and 503.5 shall conform to all applicable standards and regulations established in this ordinance including, but not limited to, Article 6 Site Development Review.

504 NONCONFORMING STRUCTURES

504.1 Applicability. No nonconforming structure shall be enlarged or extended.

504.2 Enlargement. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all of the provisions of this ordinance established in Article 3 Zoning Districts for structures in the zoning district in which the nonconforming structure is located. Such enlargement shall also comply with all other applicable Ellsworth ordinances including, but not limited, to Article 6 Site Development Review.

504.3 Termination of Nonconforming Structures.

A. **Damage to Structures.** The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is damaged in any manner and from any cause whatsoever, and the cost of repairing such damage exceeds 65% of the replacement costs of such structure on the date of such damage with the exception listed below:

i. Nonconforming structures located within the Ellsworth Urban Core may be rebuilt or repaired regardless of the extent of damage, so long as there is no increase in nonconformity.

B. **Determination of Replacement Cost.** In determining the replacement cost of any nonconforming structure, the cost of land or any factors other than the replacement cost of the nonconforming structure itself shall not be included.

505 NONCONFORMING LOTS

505.1 Applicability. Applies to the continuation, enlargement or expansion of a nonconforming lot.

505.2 Generally. A permitted allowed use may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership. This provision shall apply even though such lot fails to meet the requirements applicable in the zoning district for area or width or both, provided that yard dimensions and other requirements not involving area or width or both of the lot shall conform to the regulations for the zoning district in which such lot is located (Article 3 Zoning Districts). And the lot is provided with adequate sewage disposal system. A variance of such yard requirements for any requirements other than yard area or width shall be obtained only by permission of the Board of Appeals.

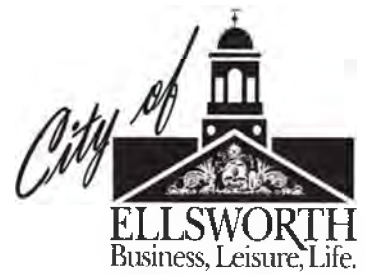
505.3 Contiguous Lots. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this ordinance, if any of these lots do not individually meet the dimensional requirements of this ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements of Article 3 Zoning Districts unless the lot is served by a public sewer or the lot can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules and contains at least 100 feet of frontage and at least 20,000 square feet of lot area.

505.4 Lots with Contiguous Frontage. If two or more lots or combinations of lots and portions of lots with continuous frontage are in single ownership of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and areas established by this ordinance (Article 3 Zoning Districts), the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used which does not meet lot width and area requirements established by the ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance. The provisions of this paragraph shall not apply where only two lots with continuous frontage are in single ownership at the time of the adoption or amendments of these requirements, provided that: A) There is a principal use structure on one of the lots; and B) Each lot has a minimum of 100 feet of frontage and 20,000 square feet in area.

City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 6
Site Development Review

Amended August 20, 2012
Amended July 15, 2013



ARTICLE 6 SITE DEVELOPMENT PLAN REVIEW

601 PURPOSE.

The purpose of site development plan review is to provide an adequate level of review for projects of greater scope and magnitude than limited scope projects.

Informational Meeting. Applicants are encouraged to schedule an optional, informal meeting with the City Planning staff and/or with the Technical Review Team to discuss their plans and gain an understanding of the review procedures, requirements and standards. Call 207-669-6608

601.1 Prevent undue adverse impact upon:

- A. The natural and man-made environment;
- B. The present and future facilities and services of the City;
- C. The abutters, the neighborhood, and the community.

601.2 Sustain the comfort, health, and contentment of residents.

602 GENERALLY

602.1 Applications. Applications for site development plan review shall include a completed application form provided by the Administrator. The filled out application form, required fees, and the required plans and other related information shall be submitted to the Code Enforcement Officer or to the City Planner, as applicable. The City Planner shall forward the application to the Planning Board and place the application on the Planning Board agenda per **Article 2 Approval and Permitting section 207** Procedures for Major Site Development Plan and Subdivision Review.

602.2 Processing. No application for site development plan review shall be considered complete, and the Administrator and/or the City Planner shall not process any application for site development plan approval, unless all the information required is included. The City Administrator and/or the City Planner shall not delay the processing of any application for site development plan approval if it contains the required information.

602.3 Submittal to Administrator. The site development plan information shall be presented in a narrative form and plan formats. All written materials shall be dated and contained in a bound report.

602.4 Certifications. Where applicant, professional or Planning Board certification and/or signatures are required, the signature lines shall be provided in the lower right-hand corner of the plans or other required documents.

602.5 Approved Plan Requirements. The applicant shall submit two approved durable, permanent, transparent material (mylar) final site development plans and one paper copy for each approved site development plan. These plans shall be signed by the reviewing authority. A digital plan shall also be submitted. Unlike the hard-copy plan, which represents a legal document, the digital plan has no legal significance.

602.6 Administrator Site Visit. The Administrator may schedule a site visit at any time in the review process. Prior to the site visit and upon request of the administrator, the applicant shall place “flagging” at the centerline of any proposed streets, at the approximate intersections of the street center and lot corners, as well as at the location of other important proposed structures and features as may be requested by the Administrator.

602.7 Number of Copies Needed for Plan Review. In general, the number of copies shall be provided as stipulated below. The City Planner and the Administrator reserve the right to request a greater or lesser number of copies as may be needed.

A. **Code Enforcement Officer.** Submission materials shall include: one copy of the application form, one copy of required submittal information, one copy of the responses demonstrating compliance with the criteria and performance standards, and two sets of all final plans and drawings. Digital copies of all approved material shall be provided to the Code Enforcement Officer.

B. **Planning Board.** Thirteen hard copies of all material (including but not limited to application form, required submittal information, responses showing compliance with the criteria and performance standards, and plans and drawings) shall be provided to the City Planner. Digital copies of all approved material shall be provided to the City Planner. Only three hard copies of the following are needed: stormwater calculations graphs, and state and federal permit applications and approvals.

602.8 Scale. Accurate scale plan of the parcel or drawings shall be provided at a scale sufficient to allow review of the information and make determination of consistency with the regulations and standards, but in no case shall the scale be more than 100 feet to the inch for that portion of the tract of land being proposed for development.

602.9 Waivers

A. **Submission Requirements.** The Administrator may modify or waive any of the submission requirements when it determines that because of the size of the project or circumstances of the site such requirements would not be applicable and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety, and welfare of the City.

- B. **Criteria and Performance Standards.** Where the Administrator makes written findings of fact that due to special circumstances of a particular project, the compliance with one or more criteria or performance standards of this Article and other pertaining articles is not requisite to provide for the public health, safety or welfare, or is non applicable, the Administrator may waive the criteria or performance standard, subject to appropriate conditions provided the waivers do not have the effect of nullifying the intent and purpose of this ordinance or other City ordinances, and further provided the criteria or performance standards of this ordinance have been or will be met by the proposed project.
- C. **Conditions and Waivers to be shown on Final Plan.** When granting waivers per the above sections A and B, the Administrator shall set conditions as needed so the purposes of these regulations are met. Granted waivers and imposed conditions, as well as the date these actions were taken shall be indicated on the signed final site development plan.

602.10 Subsequent Applications. If a site development plan is denied by the Administrator, a new site plan proposing the same development for the same property shall not be filed within six months after a final decision.

602.11 Rights Not Vested/Rights Vested.

- A. **Not Vested – Sketch Plan.** The submittal of material to the City Planner or to the Administrator or review by the Administrator of the Sketch Plan shall not be considered the initiation of the review process for the purpose of bringing the plan under the protection of Title 1, M.R.S.A section 302.
- B. **Vested – Preliminary Plan and Final Plan.** The submittal of material to the City Planner or the Administrator or review by the Administrator of the Preliminary Plan and/or the Final Plan shall be considered the initiation of the review process for the purpose of bringing the plan under the protection of Title 1, M.R.S.A section 302.

602.12 Attendance at Meetings. The developer or the developer’s duly authorized representative shall attend the meeting of the Planning Board to discuss the application.

602.13 Planning Board Review and Action Procedure.

- A. **Mandatory Preliminary Plan and Final Plan Meetings.** It is mandatory for any application to come before the Planning Board at least twice; once for a preliminary plan review and a second time for a final plan review. Sketch plan reviews do not count toward the mandatory meeting requirements.
- B. **Application Deadline.** The developer shall submit an application for review and/or approval by the Planning Board at least 20 days prior to a scheduled meeting of the Planning Board per Article 2 Approval and Permitting Procedures section 207.2 Application Deadline.

- C. **Notice to Abutters.** Upon receipt of any application for major use site development plan review, the City Planner shall notify in writing all land owners of abutting property that an application for development has been submitted per Article 2 Approval and Permitting Procedures section 207.8 Notice to Abutters and that a public hearing will be held on the subject application at the Planning Board meeting. Land owners shall be considered to be those against whom property taxes are assessed. Failure of any abutting landowner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Planning Board.
- D. **Public Hearing.** The Planning Board shall hold a public hearing at all phases of application review to include sketch plan, preliminary plan, and final plan. Notice of said hearing shall be mailed to abutting landowners and published in a local newspaper at least two times, the date of the first publication to be at least seven days prior to the hearing. A notice of said hearing shall be mailed by the City Planner to each landowner abutting the proposed development. The purpose of the public hearing shall be to receive input from the general public relative to the Site Plan.
- E. **Final Decision.** Within 30 days after the latest of (1) the second public hearing per above section D Public Hearing, or (2) the date on which the applicant furnished all information required by the Planning Board, the Planning Board shall render its decision in writing and said decision shall include findings of fact and reasons in support of the decision. In granting an approval, the Planning Board may impose such restrictions and conditions, as it deems necessary to insure compliance with the standards set forth in this ordinance, which govern each site development plan.

603 CLASSIFICATION OF PROJECTS

Projects subject to site development plan review shall be divided into two classes: *minor use site development plan* and *major use site development plan*. The Code Enforcement Officer shall classify each project. The Code Enforcement Officer, after determination that a minor use site development plan project may have significant impact to the physical, social, economy, or the environment because of stormwater, traffic, erosion, dust, phosphorus loading, sediments or other factors such as but not limited to the need for public hearings, or that there is an attempt or intent to circumvent *major use site development plan review* may classify the project as a major use site development plan project. The Code Enforcement Officer may also classify a minor use site development plan as a major use site development plan when the use is categorized as a high pollutant land uses impacts for the same reasons as above described. The Code Enforcement Officer shall classify as a major use site development all projects involving the consumption, generation, or handling of hazardous wastes as defined in Title 38, MRSA, Section 1303, radioactive wastes, as defined in Title 38, MRSA, Section 1451.

604 APPLICABILITY

604.1 Minor Use Site Development Plan. Level of review by the Code Enforcement Officer in conformity with the criteria and performance standards of this Article for non-residential projects involving:

- A. The new construction and/or expansion of gross non-residential floor area not to exceed 5,000 square feet in any five year period;
- B. The creation of impervious area between 10,000 square feet and 40,000 square feet of gross non-residential area;
- C. A change of use within an existing building or structure of less than 20,000 square feet;
- D. A project not requiring a Maine Department of Transportation Traffic Movement Permit or a modification or change to an existing Maine Department of Transportation Traffic Movement Permit;
- E. Soil disturbance, extraction industries, commercial earth moving and mining activities between 20,000 square feet and 40,000 square feet; and
- F. All projects located within the Commerce Park zoning district regardless of size.

604.2 Major Use Site Development Plan. Level of review conducted by the Planning Board in conformity with the criteria and performance standards of this Article for non-residential projects except as noted below involving:

- A. The new construction and/or expansion of gross non-residential floor area greater than 5,000 square feet in any five year period;
- B. The creation of impervious area greater than 40,000 square feet of gross non-residential area;
- C. A change of use within an existing building or structure of greater than 20,000 square feet;
- D. A Project requiring a Maine Department of Transportation Traffic Movement Permit or a modification or change to an existing Maine Department of Transportation Traffic Movement Permit;
- E. Subdivision into residential units of a new or existing structure. Such subdivision shall be recorded in the Registry of Deeds per **Article 2 Approval and Permitting Procedures section 207.10.B**. Condominiums need also to be reviewed under the Ellsworth Subdivision Ordinance.
- F. Soil disturbance, extraction industries, commercial earth moving and mining activities between greater than 40,000 square feet.
- G. The consumption, generation, or handling of hazardous wastes as defined in Title 38, MRSA, Section 1303, radioactive wastes, as defined in Title 38, MRSA, Section 1451.

604.3 Site Development Plan Review - Not Applicable. The following projects are to be reviewed as Limited Scope Project by the Code enforcement Officer.

- A. Construction of detached single-family dwellings and duplexes.

- B. Customary outbuildings for the use of the residents thereof.
- C. Construction of non-commercial barns, stables, and other agriculture- and forestry related buildings.
- D. All non-structural uses of land for agricultural or forestry purposes.

605 ADMINISTRATION OF SITE DEVELOPMENT PLAN REVIEW

605.1 Plan Approval and Permitting Procedures. Refer to Article 2.

605.2 Submissions and Standards. Minor Use Site Development Plan and Major Use Site Development Plan require the submission of the same materials and shall be held to the same performance standards.

605.3 Advisory Application Review – Sketch Plan Meeting. The Sketch Plan review meeting is a low cost way for the applicant to receive feedback from the Administrator and hear comments from the public without the need to hire a design professional. It provides guidance to the developer on the project’s feasibility. It helps acquaint the developer, the public, and the Administrator with the proposed project. The Sketch Plan review is not a decision-oriented meeting.

The developer shall provide a location map showing the project within the City of Ellsworth and a sketch plan (free hand sketch is acceptable) on a map depicting basic project information:

- A. The names and addresses of the owner of record and the applicant.
- B. The names and addresses of all consultants working on the project.
- C. Right, title, or interest in the property. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
- D. Proportionate scale plan of the parcel showing at a minimum:
 - i. The name of the development, north arrow, date, and bar scale;
 - ii. The boundaries of the parcel;
 - iii. Tax map and lot numbers;
 - iv. Size of the property;
 - v. Existing restrictions, easements, or conditions on the site;
 - vi. Description of proposed drinking water and sewage disposal methods.
 - vii. Location, orientation, height, square footage, dimensions of the existing and proposed structures on the property;
 - viii. Proposed use of each structure;
 - ix. Existing and proposed impervious surface area; and
 - x. Existing and proposed gross floor area.

605.4 Decisive Application Reviews - Preliminary and Final Plan Meetings

A. **Purpose.** The Preliminary and Final Plan meetings are outcome-based. These meetings result in a yes/no decision for completeness and an approval or denial decision based on compliance with the performance standards, respectively.

B. Preliminary Plan Meeting. The Administrator shall review the submission material – site information and related analysis provided by the developer to determine if the information provides a clear understanding of the site, as well as the opportunities and constraints they create for the use and development of the subject site. The Administrator shall advise the applicant, in writing, of needed additional information and analysis. The intent of the Preliminary Plan Meeting is for the Administrator to make a determination of completeness of material submission, as well as identify issues and constraints that must be addressed in the Final Plan meeting. The applicant will provide the information as listed below in **section 606 Submission Materials – Preliminary Plans.**

C. Final Plan Meeting. The Administrator shall evaluate if the project meets the criteria and performance standards - finding of facts and conclusion of law. These are either written or orally read into the record to explain the rationale for the final decision. The Administrator has the authority to evaluate impacts, hire experts, and impose conditions as long as it is to ensure compliance with a criteria and a performance standard. The applicant will provide information as listed below in **section 607 Standards and Criteria Governing Site Development Plan Review – Final Plan Meeting.**

606 SUBMISSION MATERIALS – PRELIMINARY PLAN MEETING

606.1 Application Form. A completed and signed City of Ellsworth Land Development Application.

606.2 Right, Title or Interest. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.

606.3 Schedule of construction. Anticipated beginning and completion dates.

606.4 Cost. Statement of overall project cost. Statement of cost for all work to take place within a public or private right-of-way and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and interest in financing the project.

606.5 Base Plan. In general, the Base Plan information shall be shown on all other plans as the base layer and shall include.

- A. The name of the development.
- B. The names and addresses of the owner of record and of the developer.
- C. The name, address and registration number and seal of the designers (land surveyor, architect, engineer and/or similar professional who prepared the plan).
- D. True and magnetic north arrows, date and bar scale.
- E. Vicinity map inset.
- F. The boundaries of the parcel and size.
- G. The bearings and distances of all property lines of the property to be developed and the source of this information.

- H. All monuments erected and concerns established in the field. The material of which the monuments, corners or other points are made shall be noted by legend.
- I. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
- J. The topography of the site at an appropriate contour interval of 2-foot to 5-foot depending on the nature of the uses and character of the site.
- K. Major natural features of the site including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats or other important natural features.
- L. Location of burial grounds, right-of-ways, and other major features.
- M. Areas with sustained slopes greater than 25% covering more than one acre of land.
- N. The tax map and lot number of the parcel(s).
- O. The location of all zoning district boundary (ies) including shoreland zones, flood hazard areas, and the 100-year flood elevation.
- P. The location of dimensional requirements required by this ordinance including but not limited to building setbacks.
- Q. Depiction of existing deed restrictions, conditions, or easements on the site.
- R. In tabular form, the zoning classification(s) of the property and dimensional requirements.

606.6 Existing and Proposed Site Conditions Plan(s). The Existing and Proposed Site Conditions should be presented on one plan and include a signature block and may be supplemented by a stand-alone individual Existing Conditions Plan and a Proposed Conditions Plan if necessary.

606.7 Existing Site Conditions

- A. Location and size of any existing sewer infrastructure within 500 feet and water mains within 200 feet of the project property line or remainder of land.
- B. Location and size of well and septic system on the property and located within 100 feet of the development (on and off property).
- C. Location and size of culverts and drains on the property and of any that will serve the development from abutting streets or land.
- D. Location, names, and present widths of existing streets and rights-of-ways within or adjacent to the proposed development. The name, location and dimensions of existing streets, right-of-ways, driveways, parking and loading areas and walkways within or adjacent to the proposed development.
- E. Location of intersecting roads or driveways within 200 feet of the site.
- F. The location of open drainage courses, wetlands, stands of trees, and other important natural features.
- G. The direction of existing surface water drainage across the site.
- H. The location, front view and dimensions of existing signs.
- I. Dimension, height, location and orientation of existing structures on the property and the use.

- J. Copy of maintenance agreements for any privately owned stormwater management facilities, parks or open space, and right-of-way.
- K. Tabulation of the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces streets, parking facilities, including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.
- L. Copy of the portion of the Hancock County Soil Survey covering the project. When the medium intensity soil survey shows soils which are unsuitable for the uses proposed, the Administrator may require the submittal of a high intensity soil survey or a report by a registered soil scientist or registered professional engineer experienced in geotechnics, indicating the sustainability of soil conditions for those uses.
- M. The location and methods of disposing for land clearing and construction debris.
- N. Emergency vehicle access on the property to and/or around the building.

606.8 Proposed Site Conditions.

- A. **General.** The location, dimensions, and ground floor elevations of all proposed buildings on the site; the location and dimensions of proposed right-of-ways, driveways, and walkways; the dimension and location of the area to be used for snow storage.
- B. **Lots.**
 - i. All lots shall meet the minimum requirements of Article 3 Zoning Districts for the zoning district in which they are located.
 - ii. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
 - iii. The ratio of lot length to width shall not be more than five to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.
- C. **Sign.** Location, front view, and dimensions of proposed signs.
- D. **Septic System.** Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified.
- E. **Lighting.** A Lighting Plan per Article 8 Exterior Lighting section 812 Lighting Plan Submittal Contents.
- F. **Traffic.** Traffic and Street Design information per Article 9 Street Design and Construction Standards section 902.1 Plan Submissions.

- G. **Parking.** Off street parking and loading areas and structures, including the number of spaces, dimensions of spaces and aisles, and landscaping of parking areas.
- H. **Bike and Pedestrian.** Pedestrian circulation system, including walkways and bicycle paths where applicable.
- I. **Stormwater Management Plan.**
 - i. Stormwater information per Article 10 Stormwater Management and Construction Standards section 1002 Plan Submittals.
 - ii. Low Impact Design information statement shall be submitted to the Administrator documenting suitable low impact design for the site, which will help to reduce stormwater volumes and help to enhance stormwater quality. Low impact design includes, but is not limited to green roofs, rain gardens, tree wells, infiltration basins, and permeable pavement.
- J. **Utility Plan.** A utility plan showing the location and dimension of water and sewer improvement, including force-mains and pump stations, electric and telephone lines, and any other utility services to be installed on the site.
- K. **Wastewater Disposal.**
 - i. Indication of the type of sewage disposal to be used.
 - ii. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department indicating the Department has reviewed and approved the sewerage system design compliant with Chapter 5, Sewer Ordinance shall be submitted.
- L. **Drinking Water.**
 - i. Indication of the type of water supply system(s) to be used.
 - ii. When water is to be supplied by a public water supply any proposed development located within 500 feet at its closest point to a water line must connect to the public water system. The developer shall provide a written statement from the Water Department that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The developer shall be responsible for paying the costs of system improvements necessary to serve the development. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Department Superintendent and the Fire Chief.
 - iii. When water is to be supplied by private well, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
- M. **Hydrogeology.** A groundwater impact analysis prepared by a groundwater hydrologist, or designed and prepared by a professional engineer registered in the State of Maine for projects involving:

- i. Common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
- ii. Any part of a project located over a significant sand and gravel aquifer by the Maine Geological Survey.

Groundwater Impact Analysis. The groundwater impact analysis shall contain at least the following information:

- a. A map showing the basic soils types.
- b. The depth to the water table at representative points throughout the site.
- c. Drainage conditions throughout the site.
- d. Data on the existing groundwater quality, either from test wells on the site or from existing wells on neighboring properties.
- e. Projections of groundwater quality based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- f. An analysis and evaluation of the effect of the development on groundwater resources. In the case of residential development, the evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the site, at the boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance.
- g. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the site and within 200 feet of the site.

N. **Fire Suppression.** Letter from the Ellsworth Fire Department stating the applicant has met with the Fire Department to discuss the project and the type of fire suppression system to be used, as well as emergency vehicle access. Provide all hydrant locations, as well as information on other fire protection measures.

O. **Landscaping.** The location, dimension, and type of walls, fences and landscaping. A planting schedule keyed to the plan and indicating the general varieties and sizes of trees, shrubs, and other plants to be planted on the site.

P. **Park and Open Space.**

- i. Any areas reserved as a park or open space shall be indicated on the application. A park and open space provision and maintenance plan shall be submitted as part of the application for development approval. This plan shall designate and indicate the type and boundaries of all proposed parks and open space.
- ii. The following areas are not considered park or open space:
 - a. Areas covered by buildings, parking lots, or other impervious surfaces accessible to automobiles;
 - b. Utility easement, drainage easements, or street right-of-ways, unless such areas are usable for public recreational purposes and will not be permanently converted to a street or trench;
 - c. Land underneath overhead utility lines.

- Q. **Critical Natural Area.** Identify areas within or in close proximity to the project which have been identified by the State of Maine as High or Moderate Value Wildlife Habitat or is part of the Maine Natural Area's Program.
- R. **National Register of Historic Places.** Identify all areas within or in close proximity to the project which are either listed or have the potential to be listed in the National Register of Historic Places, or are indentified in the Comprehensive Plan or in Chapter 39 Historic Preservation Ordinance as having historic significance.
- S. **Tabular Information.** Provide in table format the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces: streets, parking facilities including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.
- T. **Easements.** For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development.
- U. **Owner's Association.** Evidence that all requirements relative to establishment of a maintenance association or owner's association have been met. The submission shall include copies of the by-laws of any association charged with maintaining common spaces, infrastructures and lands. The association's documents shall clearly state that the association shall properly maintain the infrastructure or land serving the development after the developer has legally relinquished that responsibility and/or until such time as the City may accept ownership. The existence of this association and its purpose shall be noted on the plan.
- V. **Signature Block.** Space shall be provided on the plan on the bottom right hand corner or the signature of the Administrator and date together with the following: "Approved" or "Approved with Conditions."

607 STANDARDS AND CRITERIA GOVERNING SITE DEVELOPMENT PLAN REVIEW – FINAL PLAN MEETING.

607.1 State and Federal Permits. Prior to the review of criteria and performance standards compliance by the Administrator, the developer shall show written proof that applications have been filed for all state and federal permits including, but not limited to:

- i. Maine Department of Environmental Protection Site Location of Development Act; Great Ponds Act; Alteration of Coastal Wetlands; Freshwater Wetland Act; Alteration of Stream and Rivers; Wastewater Discharge License; Stormwater; Natural Resources Protection Act.
- ii. Maine Department of Human and Health Services applications for central water supply system and centralized or shared subsurface sewage disposal system.
- iii. U.S. Army Corps of Engineers under section 404 of the Clean Water Act.
- iv. Maine Department of Transportation Driveway and Entrance Permit; and Traffic Movement Permit

607.2 Criteria and Standards. The following criteria and standards shall be utilized by the Administrator in reviewing applications for site development plan approval. The criteria and standards are not intended to discourage creativity, invention and innovation.

A. Conformance with Comprehensive Plan. All proposed projects shall be in conformity with the Comprehensive Plan, policy statements of the City of Ellsworth, and with other pertinent provisions and ordinances.

B. Land Not Suitable For Development

- i. The following lands shall not be included in the calculations of the minimum lot area: Land which is situated below the normal high water mark of any water body.
- ii. Land which is located within the 100-year floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the developer shows proof through the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two feet above the 100-year flood level. The elevation of filled or man-made land shall not be considered.
- iii. Wetlands.

C. Lots.

- i. Lot configuration and lot area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated.
- ii. Wherever possible, side lot lines shall be perpendicular to the street.

D. Shoreland Standards. Projects which propose structures or uses located within the shoreland zone, as defined in Article 4 Shoreland Zoning may be reviewed concurrently with site development plans. It may be approved, or approved with conditions if the Administrator makes a positive finding based on the application and its supporting information that, in addition to any requirements imposed by this Article, the proposed use:

- i. Will maintain safe and healthful conditions;
- ii. Will not result in water pollution, erosion, or sedimentation to surface waters;
- iii. Will adequately provide for the disposal of all wastewater;
- iv. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitats;
- v. Will conserve shore cover and visual, as well as actual, points of access to inland and shoreland waters;
- vi. Will protect archaeological and historic resources as designated in the comprehensive plan;

- vii. Will not adversely affect existing commercial fishing or maritime activities in the General Development Zoning District;
- viii. Will avoid problems associated with floodplain development and use; and
- ix. Is in conformance with the provisions of Article 4 Shoreland Zoning.

E. Landscaping.

- i. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. Scenic vistas should be preserved.
- ii. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features shall be maintained and preserved to the greatest extent possible. Natural drainage areas shall be preserved to the maximum extent.
- iii. Landscaping shall meet Article 8 Performance Standards section 813 Buffers, Screening, and Landscaping Standards.

F. Accessways, Traffic Impacts and Access.

- i. Provisions shall be made for vehicular access to the development and circulation within the development in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the development site, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on and off-site.
- ii. All projects shall provide an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hour. Where applicable provide a traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent City and or State-owned streets.
- iii. Where a development abuts or contains an existing or proposed State- or City-owned road, permits must be obtained from the appropriate agency for entrance/driveway. This requirement shall be noted on the Plan and in the deed.
- iv. Vehicular access to and into the site shall meet the standards of Article 9 Street Design and Construction Standards, as applicable:
 - a. 907 - Street Design Standards;
 - b. 909 – Street System Design Standards;
 - c. 910 – Access Management.
 - d. 915 – Accessways in the Shoreland Zone; and
 - e. 916 – Accessway Constructions Standards.

- v. The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles through the site.
 - a. Non-residential projects shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for vehicles expected to use the facility.
 - b. Clear routes of access shall be provided and maintained for emergency vehicles to all portions of the site and shall be posted with appropriate language.
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the site and should prohibit vehicles from backing out onto a street.
 - d. All streets and accessways shall be designed to follow the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all season emergency access, snow storage, and delivery and collection services.
- vi. Where the street is designed to a private road design standard or where the street is to remain a private way until it is duly adopted by the City Council, the following words shall appear on the recorded plan & within the deed.

"The roads in this development shall remain private roads to be maintained by the developer or the lot owners until and if it meets the standards of a public road and it is duly adopted by the City Council"

G. Bike/Pedestrian Access and Circulation. The development plan shall provide for safe pedestrian circulation within the development. This pedestrian circulation system shall connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way and/or outside of the right-of-way in open space or recreation areas. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Pedestrian and bike access to the site shall also meet the standards of Article 9 Street Design and Construction Standards section 912 Sidewalks and Bikeways and section 916.5.G Sidewalk Materials.

H. Parking. The plan shall meet the criteria of Article 11 Parking Standards.

I. Environmental Standards. The development plan shall be designed in accordance with applicable standards designed to protect the environment.

- i. Stormwater. The development shall be designed to meet Article 10 Stormwater Management Design and Construction Standards. Maintenance responsibilities shall be reviewed to determine their adequacy.

- ii. Low Impact Design. The applicant shall submit technical documentation about the suitability of low impact design features which will help to reduce stormwater volumes and help to enhance stormwater quality. If non-low impact design features are selected, the applicant shall provide a statement explaining the reason why. Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site.
- iii. Erosion and Sediment control. The development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with the topography so as to create the least erosion potential and so as to adequately handle surface water runoff. The disturbed area shall be kept to a practical minimum. Any activity on a stream, watercourse or swale or upon a floodway or right-of-way shall comply with the State's Natural Resources Protection Act, Title 38 M.R.S.A. Sections 480(A)-480(S). Any such activity shall also be conducted in such a manner so as to maintain as nearly as possible the present state of the stream, watercourse, swale, floodway or right-of-way for the duration of the activity and shall be returned to its original or equal condition after such activity is completed.

J. Parks, Open Space, Natural or Historical Features.

- i. To the greatest extent possible common open space areas shall be contiguous.
- ii. Parks and open spaces, as shown on any approved development plan, shall contain a notation that these areas shall not be further developed for any other use.
- iii. Parks and open spaces should include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, and rock outcroppings).
- iv. If the proposed development contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be protected through inclusion in an open space plan, and suitably protected by appropriate covenants and management plans.
- v. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space plan, with provisions made for continued public access.

K. Drinking Water Supply.

- i. The development shall be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water.

- ii. **Groundwater Protection.** The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the Final Plan, and as restrictions in the deed.

L. Sewage Disposal.

- i. Public Sewer. Any proposed development shall connect to the existing or proposed public sewer if said sewer is located within 500 feet of the development property line. Only the City Council may waive this standard.
- ii. Private Systems.
 - a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

M. Utilities. Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.

N. Construction Debris. If on-site disposal of the street or right-of-way construction stumps and debris is proposed, the disposal site shall be suitably covered with fill and topsoil, lined, fertilized, and seeded.

O. Street Names and Traffic Signs. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the City, and shall be subject to the approval of the City Assessor's Office. The developer shall reimburse the City for the costs of installing street names, traffic safety and traffic devices.

- P. **Advertising Features.** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.
- Q. **Special Features.** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- R. **Exterior Lighting.** All exterior lighting shall be designed to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public and comply with **Article 8 Performance Standards Section 812 Exterior Lighting**.
- S. **Emergency Vehicle Access.** Provisions shall be made for adequate emergency vehicle access to buildings and structures in compliance with Chapter 4 Fire Protection and Prevention Ordinance.
- T. **Fire Suppression.** The proposed development shall comply with the applicable sections of Chapter 4 Fire Protection and Prevention Ordinance relating to fire suppression.
- U. **Waste Disposal.** The proposed development shall provide for adequate disposal of solid wastes and hazardous wastes; all solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes; and all hazardous wastes shall be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

City of Ellsworth
Chapter 56
Unified Development ordinance

Article 8
Performance Standards

Amended November 19, 2012
Amended March 17, 2014
Amended April 19, 2016
Amended May 21, 2018



ARTICLE 8 PERFORMANCE STANDARDS

801 GENERAL PERFORMANCE STANDARDS

801.1 Applicability. Notwithstanding any other requirements, all development must meet the minimum performance standards set forth in this section.

801.2 Site Conditions.

- A. During construction, the site shall be maintained and left each day in a safe and sanitary manner, and any condition, which could lead to personal injury, or property damage shall be immediately corrected by the developer upon an order by the Code Enforcement Officer or other authorized personnel. The developer shall make provisions for disposal of oil and grease from equipment, and the site area should be regularly treated to control dust from construction activity.
- B. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request of and to the satisfaction of the Code Enforcement Officer prior to issuing an occupancy permit.
- C. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site development plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval of the Code Enforcement Officer.

801.3 Dust, Fumes, Vapors, Gases, Odors, Glare, and Explosive Materials.

- A. Emission of dust, dirt, fly ash, fumes, vapors or gases, which could damage human health, animals, vegetation or property or which could soil or stain person or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall be prohibited.
- B. No land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation.

801.4 Oil and Chemical Storage. All above ground outdoor storage facilities for fuel, chemicals, chemical or industrial wastes and potentially harmful raw materials shall be located on reinforced cement and shall be completely enclosed by an impervious dike monolithically poured, which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a 50-year storm event, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for home heating fuel and diesel fuel shall be exempted from this requirement.

801.5 Buffers and Screening Standards.

- A. Buffers in the form of fences, landscaping, berms and mounds shall be required to minimize any adverse impacts or nuisance on the site or on adjacent properties.
- B. Buffers shall be considered in the following areas and for the following purposes:
 - i. Along property lines, to shield various uses from each other;
 - ii. Along service or site roads running parallel to roads exterior to the site, to prevent confusion, particularly at night;
 - iii. Parking lot, garbage collection areas, and loading and unloading areas; and
 - iv. To block prevailing wind patterns and to stop wind-borne debris from leaving the site.
- C. Buffers shall be sufficient to shield structures and uses from the view of incompatible abutting properties and public roadway, and to otherwise prevent any nuisances.
- D. Exposed storage areas, service areas, exposed machinery installation, sand and gravel extraction operations, truck-loading areas, utility buildings and structures, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, and similar accessory areas and structures, shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize their adverse impact on other land uses within the development site and surrounding properties, such as a stockade fence or a dense evergreen hedge 6 feet or more in height.
- E. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and shall be maintained in good condition.
- F. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.
- G. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires 3 rows of staggered plantings. The rows should be 5 feet apart and the evergreens planted 4 feet on center.
- H. Fencing and screening shall be durable and properly maintained at all times by the owner.
- I. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
- J. All buffer areas shall be maintained in a neat and sanitary condition by the owner.
- K. Buffers shall not obstruct or conceal Fire Department access to sprinkler and/or standpipe connections for fire protection.

801.6. Stormwater Runoff.

- A. All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwater.
- B. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

802 BACKYARD LIVESTOCK

802.1 Purpose. Ensure that non-commercial housing of livestock in urban backyards and on small lots does not create a nuisance to neighbors and the animals remain healthy. Livestock are generally accepted outdoor farm animals (i.e. cows, goats, horses, pigs, barnyard fowl, etc.) not to include cats and dogs, and other house pets.

802.2 Applicability. As defined for each type of animal. All housing of animals is prohibited from the Business Park and the Commerce Park zoning districts.

802.3 General.

- A. No owner shall allow or permit livestock to be at large meaning to be found in any place other than the property of the owner of the animals.
- B. Removal of feces should be hygienic and prompt.
- C. All animal open enclosure must be at least 50 feet from water bodies.

802.4 Standards for Chickens and Other Poultry.

- A. Roosters are prohibited from the Ellsworth Urban Core Area.
- B. Within the Downtown Zoning Districts chickens must be kept in a chicken coop and/or run.
- C. All chicken coops and run shall be located at least 20 feet from any side and rear lot line of the lot on which it is located, and 50 feet from all windows and doors of dwellings that are located on an abutting property.

802.5 Standards for Pigs, Horses, Cows, and Others.

- A. It shall be unlawful for any person to keep or maintain any horse, cow, goat, sheep, or other livestock unless such animal is kept within an enclosure located within a minimum of 200 feet of any dwelling, except the dwelling of the owner of such animals.
- B. All livestock pens, stables, and enclosures shall be kept in a clean and sanitary condition, shall provide enough space for the number of animals is houses and shall be open to inspection by the Code Enforcement Officer.
- C. No person shall allow the livestock to run at large.

803 SHOPPING CENTER - BIG BOX

803.1 Applicability. This section shall apply to Big Box Stores as defined.

803.2 Facade. Developments with facade over 100 feet in linear length shall incorporate wall projections or recesses a minimum of 3 foot depth and a minimum of 20 contiguous feet within each 100 feet of facade lengths and shall extend over 20% of the facade. Display windows, entry areas, awning, etc shall be used along at least 60% for the facade.

803.3 Roof. Roof lines shall be varied with a change in height every 100 linear feet in the building length. Parapets, mansard roofs, gable roof, hip roofs, dormers, etc. shall be used to conceal flat roofs and roof top equipment from public view. Alternating lengths and designs may be acceptable.

803.4 Pedestrian flows.

- A. Walkways shall be provided from the public sidewalk or right-of-way to the principal entrance(s) of all principal buildings on the site.
- B. At a minimum, walkways shall connect focal point of pedestrian activity such as, but not limited to, street crossing, building and store entry points.
- C. Walkways shall be provided along the full length of the building along any facade featuring a customer entrance.

804 ACCESSORY USES AND STRUCTURES (NON-RESIDENTIAL)

804.1 Purpose. To provide standards for the establishment of non-residential accessory uses and structures.

804.2 Applicability. This article applies to any subordinate use of a building or other structure, or use of land that is:

- A. Conducted on the same lot as the principal use to which it is related; and
- B. Clearly incidental to, and customarily found in connection with, the principal use or structure.

804.3 Standards and requirements. The location of permitted accessory uses or structures is governed by the same dimensional regulations as set forth for the principal uses or principal structure(s) in Article 3 Zoning Districts.

805 ACCESSORY DWELLING

805.1 Purpose. To provide the opportunity for owners of single family detached dwellings to develop a small detached dwelling unit without having to meet the minimum lot area requirement.

805.2 Applicability. This Article applies to any accessory dwelling unit that is located in a building that is not attached to the principal dwelling.

805.3 Number Permitted. Only one accessory dwelling unit is permitted per lot.

805.4 Size.

- A. The gross floor areas of an accessory dwelling unit shall not exceed 50% of the principal building's floor area.
- B. Each dwelling unit shall be a minimum of 500 square feet.

806 CAMPGROUNDS

806.1 Purpose and Applicability. This Section is to establish standards for campground construction and maintenance that promote public health, safety and welfare and shall apply to all campground construction in the City of Ellsworth. A campground is a business, public or private establishment operated as a recreational site for tents, campers, trailers, and travel-trailers, or other forms of temporary shelter.

806.2 Administration. This Section shall be administered according to all administrative and legal provisions of the City of Ellsworth Chapter 19 Land Use Ordinance.

806.3 Date. This Section shall be effective immediately after passage by the City Council.

806.4 Application. Permits required for development under this Section shall be administered according to provisions of the Ellsworth Chapter 19 Land Use Ordinance.

806.5 Management. The management of the campground shall be responsible for operating the premises in accordance with all City and State regulations. The maintenance of all open space areas, roads, and utilities in a park shall be the responsibility of its management.

806.6 Occupancy No campsite shall be used as a permanent dwelling place. Permanent occupancy of a dwelling in the campground shall only be allowed for the purpose of housing the owner and/or caretaker of the campground.

806.7 General Design Standards. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and those following in this Section. In cases of conflict, the stricter rules shall apply.

806.8 Location and Size. All campgrounds shall be located on a well drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. Campgrounds shall be located on a parcel not less than 2 acres in size.

806.9 Recreation Area. No less than 10% of the total developed area of any campground shall be devoted to common recreational areas with facilities, such as playgrounds, trails, swimming pools or community buildings on suitable land for the stated purpose. Areas designated as vegetated buffers do not count toward the minimum recreation area.

806.10 Accessways. Campground accessways serving fewer than ten camp sites are exempt from City of Ellsworth Chapter 56, Article 9 Street Design and Construction Standards. All accessways shall be constructed to allow safe vehicular access and to minimize erosion.

- 806.11 Landscaping.** Wooded areas and individual trees shall be preserved where practical. Vegetative cover such as grass shall be provided for land area not paved, graveled or occupied by a structure. Other planting shall be established to create an attractive setting for campsites, promote privacy, minimize glare, and provide shade.
- 806.12 Buffer Strips.** Campgrounds shall be designed to provide a vegetated buffer of at least 50 feet deep between the front boundary of the park and campsites and 25 feet deep between campsites and the side and rear boundaries of the park.
- 806.13 Screening.** Fuel tanks, bottled gas, dumpsters and other utility structures shall be placed in such a way that they are screened and protected from roadways.
- 806.14 Utilities.** All utilities shall be designed by a licensed civil engineer in the State of Maine to applicable state and local codes, installed and maintained by the campground owner.
- 806.15 Water Supply.** Water supply to campgrounds shall conform to the rules of the Department of Human Services, relating to tent and recreational vehicle parks and wilderness recreational parks. A Campground located within 200 feet of a public water main shall provide a water system connected into the public system.
- 806.16 Fire Protection.** Water supplies for firefighting shall comply Chapter 4 Fire Prevention and Protection Ordinance Section 7.
- 806.17 Toilet Facilities.** Campgrounds serving primitive campsites (those without self-contained camper units with sanitary hook-ups) shall have adequate toilet facilities in compliance with applicable State plumbing Codes.
- 806.18 Wastewater Disposal.** Sewage disposal plans shall be designed by a licensed civil engineer in full compliance with the requirements of the Maine Subsurface Wastewater Disposal Rules. A campground located within 500 feet of a public sewer system shall connect into the public system, per Ellsworth Chapter 5 Sewer Ordinance.
- 806.19 Stormwater.** A campground shall provide a surface water drainage system conforming to applicable provisions of City of Ellsworth Code of Ordinance, Article 10 Stormwater Management Design and Construction Standards.
- 806.20 Campfires.** Open fires shall be permitted only in areas designated on the plan of said park as cooking areas. Facilities for such fires must meet the approval of the City Fire Chief with respect to their location and construction.
- 806.21 Rubbish Disposal.** Adequate containers with tight fitting covers shall be provided by the campground operator or other means approved by the Code Enforcement Officer.

807 SITING FACILITIES POSING RISKS TO DRINKING WATER

Siting of aboveground and underground oil storage tanks and other facilities that pose a significant risk to drinking water shall comply with 38 MRSA §1391 through §1399 - An Act to Prevent Contamination of Drinking Water Supplies and Maine DEP Chapter 692 (Siting of Oil Storage Facilities) and Chapter 700 (Siting of Facilities that Poses a Significant Threat to Drinking Water).

The State of Maine prohibits the installation of new aboveground oil storage tanks (AST) facilities, such as motor fuel storage facilities and bulk fuel plants, in areas where an installation is likely to pose a threat to drinking water. The State specifically prohibits: new ASTs within the source protection area of a public drinking water well, or within 1000 feet of the public water well (whichever is greater) and new ASTs within 300 feet of a private well (except for a private water supply well located on the same property as a facility and serving only that facility); and new ASTs within a significant sand and gravel aquifer mapped by the Maine Geological Survey. Both AST and underground storage tank (UST) facilities have to comply with the same siting requirements. These siting restrictions also apply to new automotive graveyards, automobile body and maintenance repair shops, dry cleaners using perchloroethylene, metal finishing or plating facilities and commercial hazardous waste facilities located in wellhead protection zones.

808 SEWER AND WATER CONNECTIONS

808.1 Sewer. Comply with Chapter 5 Sewer Ordinance.

808.2 Water. After the effective date of adoption of this ordinance, any property which is developed for commercial, institutional or industrial use or any existing commercial, institutional or industrial building which is enlarged more than fifty percent (50%) and which contains any plumbing fixtures, as that term is defined in the Maine State Plumbing Rules, is required to connect all such fixtures to the public supply, provided that said public supply is located within 500 feet of the developed property. All properties which connect to a public system pursuant to this section shall within thirty (30) days of said connection be disconnected from any private system, and no subsequent connection to a private system shall be made.

809 ESSENTIAL SERVICES FACILITIES

809.1 Setbacks: Minimum building setback is 50 feet.

809.2 Outdoor storage. Prohibited in the Downtown (D) and Neighborhood (N) zoning districts.

809.3 Landscaping Buffer. The lot is suitably landscaped to provide an adequate buffer and soften the appearance. The landscaped buffer shall be 160 plant units per 100 linear feet of frontage; one shade tree equals five plant units, one evergreen or ornamental tree equals five plant units, and each shrub equals one plant unit. The landscape buffer may be comprised in all or in part of natural vegetation. This section applies to all zoning districts with the exception of the Industrial (I) zoning district.

810 OPIOID TREATMENT PROGRAM (i.e. METHADONE CLINICS)

810.1 Applicability. Any opioid treatment program (OTP) registered under 21 U.S.C. 823(g) shall comply with following requirements:

- A. Approved by the Planning Board as a Conditional Use regardless of size;
- B. Be part of an acute care hospital’s main campus (hospital based clinic);
- C. Be only one OTP per acute care hospital;

- D. Be restricted to a maximum of 30 patients - active case load at any one time for the entire OTP; and
- E. OTP cannot operate in part of in whole out of a mobile unit.

811 HEIGHT LIMITS

The height limits required by this ordinance shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, transmission towers, chimneys, conveyors, derricks, radio and television towers, and similar structures not intended for human occupancy.

812 EXTERIOR LIGHTING

812.1 Purpose. The purpose of this Article is to provide for outdoor lighting that will:

- Allow appropriate outdoor lighting levels for nighttime safety, security, productivity, and enjoyment of property; and
- Control glare, promote dark sky initiatives, and reduce light trespass by limiting outdoor lighting that is misdirected, excessive or unnecessary.

812.2 Applicability.

- A. All new outdoor lighting fixtures shall meet the requirements of this Article with the exception of maintenance work.
- B. Some types of outdoor lighting are exempt from meeting the requirements of this Article per section 812.7.

812.3 Lighting Plan Submittal Contents. When outdoor lighting is part of an application to the Ellsworth Planning Board or part of a project located within the Business and Technology Park Zone the applicant shall submit a Lighting Plan for all proposed outdoor lighting to include the following items:

- A. General information including: title block; north arrow; area in square footage specified for each lot, structure and large feature; property lines; scale; topography; and types of abutting uses.

The location of all existing and proposed outdoor lighting fixtures.

The location of all proposed outdoor lighting fixtures in relation to other existing or proposed site features to include, but not limited to, parking lots, walkways, buildings and structures, signs, trees and shrubbery.

Lighting details for each style of lighting fixture including full model number, reflectors, poles, lamp type, optics selected and mounting shown on the side of the Lighting Plan or submitted as “marked up cut sheets.”

- A photometric plan that indicates the initial light intensity in foot-candles every 5 feet minimum for the site property out to 10 feet beyond the property line for operational hours and in contour lines showing the contribution of light fixtures. Also submit a table of foot-candle data to include minimum, maximum, and averages for the calculated areas as identified in Table 812.5 Maintained Illumination Levels Measured in Foot Candles at Grade.

Other information, as deemed necessary by the Administrator.

812.4 Required Number of Submittal Copies:

- A. **CEO-Approved project.** The applicant shall submit two copies of all material to the Code Enforcement Office.
- B. **For Planning Board-approved project.** The applicant shall submit 13 copies of all material to the City Planner or designee.

812.5 Lighting Standards

- A. **Light Nuisance.** All outdoor lighting shall be located, shielded, and maintained so as not to constitute a hazard or nuisance to the traveling public or neighbors. Glare shall be avoided and light trespass minimized to less than 0.1 foot-candles.
- B. **Contrast.** Employ evenly distributed transitional light levels which are consistent with the surrounding area to minimize contrast between lit areas and dark surroundings.
- C. **Fixture Cut-Off.** Full cut-off lighting fixtures are required for all outdoor walkways, parking lots, canopy and building/wall mounted lighting, and all lighting fixtures located within those portions of structures which contain exterior walls that are not fully enclosed between the floor and ceiling. Full cut-off lighting fixtures emit no light at or above the horizontal plane as measured at the light source. Fixtures meeting the full cutoff requirement, as defined by the Illumination Engineering Society (IES), shall be indicated on the cut sheet or lighting plan submitted.
- D. **Maintained Illumination Levels.** In order to minimize glare, potential hazardous conditions, provide for security and safety outdoor lighting illumination levels shall meet the requirements set forth in Table 812.5 for any use permitted in this Article.

Foot-candle: A measure of light falling on a surface. One foot-candle is equal to the amount of light generated by one candle shining on one square foot surface located one foot away. Foot-candle measurements shall be made with a photometric light meter three feet above the ground.

Areas/Uses-Activities		Maximum At Any Point*	Average Maximum At Any Point*	Minimum at Any Point*
Inside the Urban Core Area	Parking Lots	10	2	0.5
	Active Building Entrance	20	15	10
	Walkways/sidewalks on private land	10	2	0.5
	Under Service Station Canopies	20	10	5
	Vehicular Sale Display	20	10	5
	Externally Illuminated Sign Surface	10	2	NA
Inside the Growth Area but outside the Urban Core Area	Parking Lots	5	1	0.2
	Active Building Entrance	15	12	8
	Walkways/sidewalks on private land	5	1	0.2
	Under Service Station Canopies	15	8	3
	Vehicular Sale Display	15	8	3
	Externally Illuminated Sign Surface	5	1	NA
Inside the Rural Area but outside the Growth Area	Parking Lots	4	0.5	0.1
	Active Building Entrance	12	8	5
	Walkways/sidewalks on private land	4	0.5	0.1
	Under Service Station Canopies	10	5	2
	Vehicular Sale Display	10	5	2
	Externally Illuminated Sign Surface	3	1	NA

*In instances, where it is difficult for a development to meet the Minimum at Any Point or the Average Maximum at Any Point standards, the following illumination contrast ratios, in foot-candles, will be allowed: 1) the contrast ratio of the Maximum at Any Point to the Minimum at Any Point shall be 20:1 or less, and 2) the contrast ratio of the Maximum at Any Point to the Average Maximum at Any Point shall be 4:1 or less.

812.6 HEIGHT LIMITS

A. Pole-Mounting Limit

Lighting mounted onto poles or any structures intended primarily for mounting of lighting shall not exceed the following height as measured from the finish grade:

- i. 35 feet for driveways, parking and transit areas.
- ii. 20 feet for walkways, plazas, and other pedestrian areas.
- iii. 15 feet for all other lighting.

B. Building/Structure-Mounted Limit

Light mounted onto buildings or other structures shall not exceed a mounting height greater than 4 feet higher than the tallest part of the building or structure at the place where the lighting is installed. With the following exceptions:

- i. Lighting for facades may be mounted at any height equal to, or less than the total height of the structure being illuminated.
- ii. For buildings, canopies, or overhang located less than 40 feet from the property line or the sidewalk or public right-of-way, outdoor lighting fixtures shall be mounted to the vertical façade or underside of canopies at 16 feet or less.

812.7 EXEMPT LIGHTING. The following types of outdoor lighting are exempt from the provisions of this Article.

A. Internally illuminated signs. However, it is required that all such signs should have “dark” backgrounds (opaque or colored) and “light” lettering (white or lighter colored than the background) so as to minimize glare or luminous overload.

Temporary lighting. Includes, but is not limited to, temporary lighting for theatrical, television, and performance areas; temporary holiday lighting provided that individual lamps are 10 watts or less; and temporary construction lighting used by government-funded projects to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares. Temporary lighting per the National Electric Code shall not be in place for greater than 90 days otherwise is to be considered permanent and therefore meet the code requirements as set forth herein.

Safety. Exit signs, and lighting for egress pathway stairs and ramps.

Federal/State Required Lighting. Lighting required and regulated by the Federal Aviation Administration, U. S. Coast Guard, or other federal or state agency.

Street and Sidewalk Lights. Street lights within the public right-of-way and bridges.

Single- and Two-Family Residential Properties. Obtrusive light (spill light) that creates glare, annoyance or obstructs visual ability is prohibited. There shall be no light trespass beyond the property line.

812.8 SPECIAL LIGHTING. Upon review and determination by the Administrator that the proposed outdoor lighting will not create unwarranted glare, glow, or light trespass, outdoor lighting not complying with the technical requirements of this Article may be installed for the following applications:

A. Recreation. Sport fields, stadiums, and specialized theme parks.

Water Features. Lighting in swimming pools, fountains, and other water features.

Church and Government. Public monuments, public buildings, and houses of worship.

Pole Mounting Height. Industrial areas where higher pole heights are required to avoid interference of vehicle with the pole assembly.

National and State Flags. The type of lighting fixture to illuminate National and State flags should be a narrow beam focused. Flag lighting within the Growth Area should be done with spot lights greater than 70 watts but less than 250 watts and within the Rural Area flag with a spot light greater than 40 watts but less than 100 watts.

F. **Confinement of Light to Object.** Outdoor lighting used to illuminate flags, statues, signs or other objects mounted on a pole, pedestal or platform, spotlighting or floodlighting used for architectural or landscape purposes, must use fully shielded or directionally shielded lighting fixtures that are aimed and controlled so that the directed light is substantially confined to the object intended to be illuminated.

812.9 PROHIBITED LIGHTING

A. **Mercury-Vapor Fixture and Lamps.** The installation of any mercury-vapor fixture or lamp for use as outdoor lighting is prohibited.

Laser Source Light. The operation of laser source light or any similar high-intensity light for outdoor advertising is prohibited.

Searchlights. The operation of searchlights for advertising purposes is prohibited.

813 BUFFERS, SCREENING, AND LANDSCAPING STANDARDS

813.1 Purpose.

- A. Protect existing trees, natural areas and features.
- B. Support visual screening and creation of privacy.

813.2 Applicability.

In general this section applies to any of the following activities:

- A. The construction or erection of any new building or structure for which a development approval (building permit, Planning Board approval, etc.) is required.
- B. The enlargement of the exterior dimensions of an existing building or structure for which a development approval is required.
- C. The construction of a new parking lot or expansion of an existing parking lot.
- D. Unless otherwise stipulated the landscaping standards are not cumulative. For example, if both the yard buffer and parking buffer apply then the more stringent of the two shall apply.

813.3 Expansion.

When a building, structure, or parking lot is enlarged, the buffer and landscape requirements apply on an incremental basis. This means that landscaping is required in the same proportion that the enlarged building area or off-street parking area has to the existing development (e.g., a 10% increase requires 10% of the required landscaping).

813.4 Exemptions.

Unless otherwise specified, this section does not apply to the following uses:

- A. Single family attached or detached dwelling units.
- B. Agricultural and forestry uses taking place in the Industrial (I), Rural (R), and Drinking Water (DW) zoning districts.
- C. Commercial and industrial uses that abut other similar uses, respectively.
- D. Contiguous commercial or industrial parcels or land areas under common ownership.

813.5 Acceptable Landscape Materials.

- A. Plant materials shall comply with the minimum size requirements at the time of installation. Plant height shall be measured from the average grade level of the immediate planting area to the top horizontal plane of the shrub at planting.
- B. Planting areas should consist of permeable surface areas only.
- C. Each tree or shrub shall be planted at least 30 inches from the edge of any paved or impervious surface.

813.6 Minimum Planting Specifications Unless Otherwise Specified.

Table 813.6 Minimum Planting Specifications	
Landscape Features	Minimum Caliper/Height at the Time of Planting
Deciduous Trees	<ul style="list-style-type: none"> · Single-trunk trees: minimum of 1.5 inches measured at 6 inches above grade. · Multi-trunk: minimum of 6 feet in height at the time of planting.
Coniferous trees	Minimum of 6 feet in height at the time of planting.
Shrubs	1 foot

813.7 Design. Plant materials may be arranged in a way to simulate natural growth pattern rather than spaced at regular intervals.

813.8 Fire Suppression.

- A. Landscaping, including but not limited to fences, screenings berms, trees, shrubs, and other plantings shall not visually or physically obstruct emergency equipment and personnel access to any sprinkler and standpipe connections and control valves, public and private fire hydrants and Knox Boxes.
- B. Landscaping shall be kept of to a minimum of 10 feet from compressed gas containers, cylinders, tanks, and systems.

813.9 Permitted Uses Within the Buffers. No active recreation area, storage of materials, parking or structure, except for necessary utility boxes and equipment, shall be located within the side and rear buffer yards. The buffer yard may be included in the required setback. For the purpose of this article berms are not structures.

813.10 Maintenance. Landscaping shall be maintained intensively for a minimum of two years to ensure the survival and establishment of all plant materials. The applicant will continue to maintain all landscaping in accordance with the approved plan for the life of the project. Dead and dying plantings shall be replaced as needed.

813.11 Waivers. The administrator may reduce or waive the standards, require keeping an existing stand of trees and/or require a fence, wall, or berm or any combination thereof, if the administrator finds that there would be no adverse impacts upon the neighboring properties resulting from the reduction of substitution.

813.12 Line of Sight. Landscaping shall not obstruct drivers' line of sight.

813.13 LOT LANDSCAPING STANDARD - DT AND U ZONING DISTRICTS

A. Applicability. This section applies to all commercial, industrial, and multi-family buildings and structures within the Downtown (DT) and the Urban (U) zoning districts. Lot landscaping should provide screening to mechanical equipment and stormwater relief, and complement streetscape design.

B. Exempt from this Standard.

- i. Buildings fronting on Main Street between the Union River and High Street.
- ii. If the total footprint of the building is less than 1,000 square feet.
- iii. If the front setback is less than 20 feet for buildings in the Downtown (DT) zoning district.
- iv. If the front setback is less than 30 feet for buildings in the Urban (U) zoning district.

C. Standard.

- i. The percentage of required landscaping area is calculated based on the size of the lot or parcel.
- ii. Downtown (DT) zoning district – if the front setback is more than 20 feet then the developer shall provide a minimum of 15% of landscaping area and/or low impact development cover excluding green roofs.
- iii. Urban (U) zoning district – if the front setback is more than 30 feet then the developer shall provide a minimum of 20% of landscaping area and/or low impact development cover excluding green roofs.

813.14 PARKING AREA BUFFER – ROAD, RESIDENTIAL USE AND LOADING AREAS

A. Applicability.

- i. For any parking lot located within the front yard and having 20 parking spaces or more.
- ii. For any parking lot abutting an existing residential use and having 20 parking spaces or more.
- iii. For any area used exclusively for the display of 20 or more motor vehicles for sale as part of an automobile dealership having a side or rear property line directly abutting an existing residential use.
- iv. For any type of vehicle fleet, automobile service establishment, vehicle storage, etc., having the ability to accommodate 20 cars or more and directly abutting an existing residential use.
- v. Loading areas abutting a road or an existing residential use.

B. Exemptions.

- i. Downtown (DT) zoning district.
- ii. For uses within the Industrial (I) zoning district except when having a side or rear property line directly abutting an existing residential use.
- iii. For any area used exclusively for the display of motor vehicles for sale as part of an automobile dealership fronting the road.

- C. **Standard.** Between the street and existing residential uses and parking areas meeting the applicability threshold, the applicant shall have the following options:
- i. A 10-foot-wide minimum landscaped strip between a street and the parking lot, planted with a minimum of three trees and 25 shrubs for every 100 feet of road frontage, excluding driveway openings;
 - ii. A berm that is at least two-and-a-half feet higher than the finished elevation of the parking lot with a maximum of a 3:1 slope planted with a minimum of 15 shrubs for every 100 linear feet of frontage; or
 - iii. If existing woodlands are available, the applicant can preserve a 20-foot wide strip in lieu of the landscaping requirement along the frontage.

813.15 INTERIOR PARKING LOT.

- A. **Applicability.** To provide visual breaks, shade, and stormwater management (low impact design) to parking lots with more than 25 parking spaces, as well as assist in defining circulation.
- B. **Standard.**
- i. Interior islands shall contain shade trees based on a minimum ratio 1 tree and 3 shrubs for every 5,000 square feet of parking area. A minimum of 100 square feet of planting area shall be provided per every tree and three shrubs.
 - ii. Parking lot island curbing shall have cuts to facilitate stormwater infiltration.
 - iii. These landscape islands should be used to assist in defining circulation routes and separating traffic on site for safety as well as for aesthetic purposes.

813.16 REAR AND SIDE BUFFER – BETWEEN RESIDENTIAL AND NON-RESIDENTIAL USES.

- A. **Applicability Rear and Side Buffers.** To provide landscaped and screening separation between existing residential and non-residential uses along the side or rear lot lines.
- B. **Standard.**
- i. Minimum buffer width of 10 feet.
 - ii. Minimum of 8 trees per 100 linear feet of buffer.
 - iii. Minimum of 13 shrubs per 100 linear feet of buffer

813.17 ROAD BUFFER – MANUFACTURING, INDUSTRIAL, AND HEAVY COMMERCIAL.

- A. **Applicability.** To provide landscaped and screening separation between the road and heavy manufacturing, industrial, and heavy commercial uses as deemed needed by the Administrator for uses such as, but not limited to the manufacturing of asphalt, petroleum or lubricants; chemical products or hazardous substances; glass, clay, cement, concrete or gypsum products; rubber or plastic; leather, textiles or fabric; timber of wood products; fueling and maintenance facilities; road salt storage and loading area, large vehicle fleet storage; auto salvage or recycling; electricity generation; hazardous waste

treatment, storage or disposal; landfill; recycling facility; sewage treatment works; warehousing and mineral Extraction.

B. **Standard.** The developer can choose to use plantings, fences/wall, berms or a combination thereof.

i. Plantings.

- a. Minimum buffer width of 30 feet.
- b. Minimum of 12 trees per 100 linear feet of buffer.
- c. Minimum of 13 shrubs per 100 linear feet of buffer.

ii. Fences and Walls.

- a. Fences or walls may only be used outside the Ellsworth Urban Core Area.
- b. Fences or walls shall be 6 feet high when used to meet the buffer yard requirements.
- c. No fence or wall is required if an existing fence or wall on an abutting property meets the requirements of this section.
- d. The fence or wall shall be solid and 100% opaque. Corrugated and galvanized steel or metal sheets are not permitted.
- e. Walls may be concrete, concrete blocks, masonry, stone or a combination of these materials. The support posts shall be placed on and faced toward the inside of the developing property so that the surface of the wall or fence is smooth on the abutting property side.

iii. Berms.

- a. Berms shall have a slope not greater than the slope created in 3 horizontal feet with 1-foot vertical rise (3:1 slope).
- b. The berm shall be no greater than 6 feet in height above natural grade.
- c. Berms shall be constructed solely of soil, and shall not contain concrete, brick, tires, or other similar materials.
- d. To provide visual relief, any berms exceeding 10 feet in length shall be curvilinear and shall vary in height.
- e. For every 100 linear feet, there shall be planted at least three trees and 30 shrubs. Required trees and shrubs may be exchanged for one another with one tree equalling five shrubs.
- f. The surface of the berm that is not planted with trees and shrubs shall be covered with grass, perennial ground cover, vines, and woody and herbaceous perennial, with mulch.

813.18 SCREENING OF TRASH RECEPTACLES.

Trash receptacles should be enclosed on all four sides by a continuous visual screen that matches or complements the principal use and surroundings. The screening shall be a minimum of 6 feet or the height of the receptacle, whichever is greater.

814 PUBLIC AND QUASI-GOVERNMENTAL TRAILER-ABLE BOAT LAUNCHING FACILITIES FOR THE DRINKING WATER ZONING DISTRICT.

814.1 All public and quasi-governmental trailer-able boat launching facilities providing access to Branch Lake shall comply with the following requirements:

- A. The facility shall be gated and locked during off-hours.
- B. The facility shall be supervised by an attendant during hours of operation.
- C. The facility shall be equipped with a boat wash-down facility for the sole purpose of washing down boats.
- D. The facility attendant shall conduct a boat inspection on all watercraft prior to entering Branch Lake.
- E. A boat inspection includes: a) a visual inspection of a boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants or animals are introduced into Branch Lake and b) a boat wash down.

815 STREET NAMING AND PROPERTY NUMBERING

815.1 Purpose. The Assessor shall establish and maintain a street naming and property numbering system. This is intended to minimize problems of identification for emergency management services and other public services and shall be subject to the requirements set forth in this section.

- A. All streets and properties shall bear a distinctive name and number in accordance with and as designated upon a Street Name and Property Number Designation Map on file with the City's Assessing Office. The Assessor or designee shall establish, maintain and keep current said map.
- B. The Assessor shall assign all such names and numbers as are necessary to maintain the system.
- C. In naming streets, the Assessor should avoid the use of the following:
 - i. Duplicate and similar-sounding names.
 - ii. Alphabetical letters.

- D. The Assessor shall assign numbers that are consistent with the United States Postal Services practices (i.e., even numbers on the left and odd numbers on the right).
- E. Numbers shall be affixed to the principal structures.
- F. Numbers shall be located on structures so as to be readily visible from and oriented toward the street from which the address is taken.
- G. For principal structures more than 50 feet from the street or otherwise not readily visible from the street due to trees, fences or other similar obstructions, there shall be placed and maintained a secure post at the structure's entrance upon which shall be affixed the designated number. Said post must also be readily visible but must not be placed in the right-of-way, and said post must be at least 4 feet in height. In lieu of said post, the number may be affixed to a mailbox.
- H. For multi-family or apartment complexes, the number shall be consistent with and displayed as outlined in sections E through G above. Each individual unit will be identified by a sub letter (i.e., Apartment A).
- I. Numbers shall be no less than 3 inches in height. Standard numbers shall be provided by the City upon the request of the homeowner.
- J. No person shall erect any street name sign or affix any street number different than those approved by the Assessor's Office.

816 WASTE MATERIAL ACCUMULATIONS REGULATED.

Deposits or accumulations of rubbish, junk, junk automobiles and parts thereof, discarded articles of any kind, household, industrial or commercial wastes shall not be made in any zoning district except at a dumping place or places designated as such by the City Council, provided, however, that nothing in this Article shall be construed to prohibit the establishment or operation of commercial junk yards and automobile graveyards as permitted under the terms of this ordinance.

817 MEDICAL MARIJUANA DISPENSARY

817.1 Purpose and Applicability. This Section is to establish standards for medical marijuana dispensaries and to regulate the cultivation and retailing of medical marijuana in a manner that protects the health, safety and welfare of the residents, merchants, and customers.

817.2 Authority. This section has been prepared in accordance with the provisions of Title 22, Chapter 558-C § 2421-2429 of the Maine Revised Statutes Annotated (M.R.S.A.), Title 30-A §3001, and the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).

817.3 Administration. This Section shall be administered according to all administrative and legal provisions of this ordinance with the following exception:

- A. For the establishment of a new dispensary, the re-location of an existing Ellsworth dispensary to a new location within the City of Ellsworth, or a change from cultivation facility to retail facility or vice versa, the project shall be reviewed by the Planning Board as a major use site development plan regardless of threshold factors such as but

not limited to size or change of use that would ordinarily bring the review to the Code Enforcement level.

Approval of subsequent project phases by the Administrator shall only be given upon satisfactory completion of all approvals/permits pertaining to previous phases having been met.

817.4 Limit on Number of Dispensaries. There shall only be one dispensary within the City of Ellsworth and it shall operate from only one physical location.

817.5 Not-for-profit Corporation. A dispensary must operate on a not-for-profit basis.

817.6 Location.

- A. A dispensary shall not locate within 500 feet of the property line of the following pre-existing uses located within or outside the City of Ellsworth:
 - i. Public or private schools;
 - ii. Public facilities such as playgrounds, pools, parks, recreation facilities, and libraries;
 - iii. Substance abuse rehabilitation centers, correctional facilities, and homeless shelters;
 - iv. Places of worship; and
 - v. Day care.
- B. A dispensary may be located in a multi-occupant building unless one or more of the units are housing units.
- C. It is prohibited to co-locate an office that can issue a physician's written certification from the same premise as a dispensary.
- D. A dispensary shall not adversely affect health and safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- E. A dispensary shall not have on-site display of marijuana plants.
- F. Only medical marijuana retail facilities shall sell paraphernalia used for the use or consumption of medical marijuana to registered patients or registered primary caregivers, as defined in the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).
- G. There shall be no window display.
- H. A dispensary shall be operated from a permanent location and shall not be permitted to operate from a moveable, mobile, or transitory location.

817.7 Zone. A dispensary is allowed only within the Urban (U), Industrial (I), and Commercial (C), zoning districts. A dispensary is strictly prohibited from all other zoning districts.

817.8 Cultivation. All cultivation of marijuana shall take place in a non-transparent secured building.

817.9 Parking. Dispensaries shall be prohibited from having off-site parking or satellite parking.

818. MEDICAL MARIJUANA PRIMARY CAREGIVER OPERATIONS

818.1 Applicability.

- A. Medical marijuana primary caregiver operations (cultivation, production, dispensing, and all related activities) outside the primary residence of the primary caregiver and collectives are prohibited in all zoning districts.
- B. Medical marijuana primary caregiver operations (cultivation, production, dispensing, and all related activities) at the primary residence of the primary caregiver are allowed in all zoning districts and shall comply with the Home Occupations section below.

818.2 Authority. This section and the terms used are in accordance with the provisions of and as defined in Title 22, Chapter 558-C § 2421-2429 of the Maine Revised Statutes Annotated (M.R.S.A.), Title 30-A §3001, and the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).

819 HOME OCCUPATIONS

819.1 Purpose and Findings.

- A. Established criteria for operation of home occupations in dwelling units;
- B. Ensures that such home occupations are compatible with adjacent and nearby residential properties and uses; and
- C. Allows residents of Ellsworth to use their residences as places to enhance or fulfill personal economic goals.

819.2 Applicability.

- A. Applies to any occupations, profession, or business activity customarily conducted entirely within a dwelling unit and carried on by a member of the family residing in the dwelling unit, and which occupation or profession is clearly incidental and subordinate to the use of the dwelling unit for dwelling purposes and does not change the character of the dwelling unit. A home occupation is an accessory use to a dwelling unit.
- B. No home occupation, except as otherwise provided in this section, may be initiated, established, or maintained in the unit except in conformance with the regulations and performance standards set forth in this section. A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes.

819.3 Exempt Home Occupations.

The activities listed below are not subject to this section, provided that all persons engaged in such activities reside on the premises:

- A. Artists, sculptors, and composers not selling their artistic product to the public on the premises;
- B. Craft work, such as, but not limited to, jewelry-making and pottery, with no sales permitted on the premises;
- C. Home offices with no client visits to the home permitted; and
- D. Telephone answering and message services.

819.4 Permitted Home Occupations in the Downtown, Industrial, Urban Neighborhood, and Commercial Zoning Districts.

The following home occupations are permitted subject to the performance standards established in table 818.7 Home Occupation Performance Standards by Zoning Districts:

- A. Accounting, tax preparations, bookkeeping, and payroll services.
- B. Baking and cooking.
- C. Catering.
- D. Child Care.
- E. Computer repair, systems design, and related services.
- F. Drafting services.
- G. Engineering, architecture, and landscape architecture.
- H. Financial planning and investment services.
- I. Fine arts studios.
- J. Hair salon, barbering, hairdressing, and other personal care services.
- K. Legal services.
- L. Musical instruction.
- M. Offices for professional, scientific, or technical services or administrative services.
- N. Photographic services.
- O. Professional services including the practice of law.
- P. Real estate services and appraisal.
- Q. Teaching of crafts.
- R. Tutoring.

819.5 Permitted Home Occupations in the Drinking Water and Rural zoning Districts.

The following home occupations are permitted subject to the performance standards established in table 818.6 Home Occupation Performance Standards by Zoning Districts:

- A. Accounting, tax preparations, bookkeeping, and payroll services.
- B. Baking and cooking.
- C. Catering.
- D. Child Care.
- E. Computer repair, systems design, and related services.
- F. Drafting services.
- G. Engineering, architecture, and landscape architecture.
- H. Financial planning and investment services.
- I. Fine arts studios.
- J. Hair salon, barbering, hairdressing, and other personal care services.
- K. Legal services.
- L. Musical instruction.
- M. Offices for professional, scientific, or technical services or administrative services.
- N. Photographic services.
- O. Professional services including the practice of law.
- P. Real estate services and appraisal.
- Q. Teaching of crafts.
- R. Tutoring.
- S. Medical/dental offices.

- T. Motor vehicle and engine repair.
- U. Furniture refinishing.
- V. Recording Studios.
- W. Animal grooming.
- X. Machine shop/metal working.
- Y. Retail sales.
- Z. Contractor and Trade shops.

819.6 Permitted Home Occupations in All Zoning Districts.

The following home occupations are permitted, subject to the performance standards established in table 819.7 Home Occupation Performance Standards, in all Zoning Districts:

- A. Medical marijuana primary caregiver operations (production, cultivation, dispensing, and all related activities).

In some cases, a home-occupation may have to comply with the Ellsworth Code of Ordinances Chapter 4, Fire Protection and Prevention. For more information, please contact the Ellsworth Fire Inspector at 669-6612.

819.7 Performance Standards.

All permitted home occupations shall comply with the criteria of Table 819.7 Home Occupation Performance Standards.

Table 819.7 Applicable Home Occupation Performance Standards by Zoning Districts and for Medical Marijuana (MJ) Primary Caregiver Operations*			
Performance Standards	DW and R	All Other zoning districts	MJ Primary Caregiver Operations
The use shall be clearly incidental and secondary to residential occupancy.	✓	✓	✓
The use shall be conducted entirely within the interior of the residence.	✓	✓	NA
Not more than 6 clients per day. Hours for visits shall be between 8:00 AM and 8:00 PM.	✓	✓	✓
Not more than 25% of the gross floor area of the principal dwelling structure shall be utilized for the home occupation.	✓	✓	✓
Music, art, craft, or similar lessons are permitted (12 or few clients per day).	✓	✓	NA
Child care (maximum of 6 children) is permitted.	✓	✓	NA
Storage of goods and materials shall be inside and shall not include flammable, combustible, or explosive materials.	✓	✓	✓
Off-street parking shall be provided.	✓	✓	✓
Outside storage of heavy equipment or material shall be prohibited.		✓	✓
Mechanized equipment shall be used only in a completely enclosed building.		✓	✓
Electronically amplified sounds shall not be audible from adjacent properties or public streets.	✓	✓	✓
No generation of dust, odors, noise, vibration, or electrical interference or fluctuation shall be perceptible beyond the property line.	✓	✓	✓
Deliveries and pickups shall be those normally associated with residential services, shall not block traffic circulation, and shall occur between 8:00AM and 8:00 PM.	✓	✓	✓
*Medical marijuana primary caregiver operations are allowed, as home occupations, in all zoning districts.			

819.8 Outdoor Storage

- A. Storage shall be limited to materials related to the business.
- B. Materials shall not be stacked to a height exceeding 4 feet and shall not be visible from the public right-of-way or adjacent lot or parcel occupied by a residence. Any screening required to comply with this subsection shall use wood or masonry fencing or a vegetative hedge;

- C. The storage shall not create any smoke, odors, dust, or noise at a level discernible at any of its lot lines; and
- D. The minimum lot size for outdoor storage shall be 2 acres. In no event shall a home occupation be established on a lot that is nonconforming as to the minimum lot size.

819.9 Accessory Buildings. Where a home occupation is conducted in an accessory building, such accessory building shall not exceed the square footage of the footprint of the dwelling.

819.10 Employees. The family member conducting the home occupation may employ at the dwelling a maximum of two nonresident employees to assist in the home occupation. There shall be a maximum of 5 workers including family members.

819.11 Unsafe Home Occupations. If any home occupation has become dangerous or unsafe; presents a safety hazard to the public, pedestrians on public sidewalks, or motorists on a public right-of-way; or presents a safety hazard to adjacent or nearby properties, residents, or businesses, the Code Enforcement Office shall issue an order to the dwelling owner and/or tenant on the property on which the home occupation is being undertaken, directing that the home occupation immediately be made safe or terminated. In the event of a failure to do so by the owner and/or tenant, after notice and a reasonable period of time, the Code Enforcement Officer may take any and all available enforcement actions to render the home occupation and dwelling safe. Costs incurred by the Code Enforcement Officer, if forced to take enforcement actions, shall be borne by the property owner and shall be treated as a zoning violation. Safety concerns pertaining to medical marijuana caregiver operations are outside the jurisdiction of the Ellsworth Code Enforcement officer and shall be reported to the Ellsworth Police Department and/or the Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention.

820 MOBILE HOME PARK STANDARDS

820.1 Purpose. This Section is intended to promote public health, safety and welfare; to establish standards for Mobile Home Park construction and maintenance; to create construction standards and other regulations of Emergency Mobile Home Parks; and to provide a wholesome community environment. This section is supplementary to the Ellsworth *Subdivision Ordinance*.

820.2 Applicability. This Section shall apply to all Mobile Home Parks in the City of Ellsworth, Maine. The term “Park” when used herein refers to Mobile Home Parks, as defined. The term “Site” when used herein refers to a Mobile Home Site, as defined.

820.3 Zoning Districts. Mobile Home Parks are allowed only in the Rural (R) zoning districts. Emergency Mobile Home Parks are allowed within any Land Use District other than districts within the Shoreland Zone.

820.4 Authority. This Section is enacted pursuant to 30-A M.R.S.A., Section 4358 Regulation of Mobile Home, et. Seq.

- 820.5 Supplementary Document.** Except as stipulated in this Section, Mobile Home Parks must meet all of the applicable requirements for a residential subdivision, and must conform to all applicable state laws and city ordinances. Where the provisions of this Section conflict with specific provisions of the Ellsworth Subdivision Ordinance provisions of this Section prevail. In particular, Subdivision “Lot” design requirements do not directly apply as Mobile Home “Site” design requirements, which are specified herein and Mobile Home Parks are not reviewed as “cluster” subdivisions.
- 820.6 Administration.** This Section shall be administered according to all applicable procedures, penalties, remedies and legal provisions stated in the Ellsworth Subdivision Ordinance and the supplementary provisions stated in this Section.
- 820.7 Planning Board Review.** Proposed Mobile Home Parks, expansions of the number of home sites within a Park or any proposal classified by the Code Enforcement Officer as a major use site development must first be reviewed and approved by the Ellsworth Planning Board in accordance with this Section, the Subdivision Ordinance and any other applicable City ordinances.
- 820.8 Submittal.** A signed Land Development Permit application to construct a Mobile Home Park shall be submitted to the City Planner with the fee and applicable documentation required by the Ellsworth Subdivision Ordinance. Plans for review shall conform to applicable requirements of the Ellsworth Subdivision Ordinance. Number of copies shall conform to Article 6 Site Development Review Section 602.7.
- 820.9 Fee.** To defray administrative expenses, plans shall be accompanied by a fee in the form of a check payable to the City of Ellsworth. Mobile Home Sites shall be considered subdivision lots for calculating these fees per the Ellsworth Subdivision Ordinance. No fee is required for an Emergency Mobile Home Park.
- 820.10 The Final Plan** shall be certified by a design professional registered in the State of Maine and shall comply with all applicable City Ordinances. The approved, signed park plan must be filed with the City and recorded at the Registry of Deeds within 90 days of signing. It must include notes or conditions of approval as well as a description of the type of ownership and provisions for management and maintenance of the Park.
- 820.11 Building Permits.** Following Planning Board approval, building, plumbing and electrical permits may be issued by the Ellsworth Code Enforcement Officer.
- 820.12 Occupancy Permit.** No Mobile Home Park hereafter constructed or expanded shall be used or occupied until a Certificate of Occupancy has been issued by the Code Enforcement Officer certifying that the Park complies with this Section.
- 820.13 Conversion.** No Mobile Home Park may be converted to another use without the approval of the Planning Board.

820.14 Mobile Home Park Management.

- A. **Compliance.** A Mobile Home Park shall conform to City ordinances and to the rules and regulations of the State of Maine Department of Health and Human Services relating to mobile homes.
- B. **Responsibility.** The Mobile Home Park management shall inform park occupants about DHHS rules and clearly indicate the occupants' responsibilities under them.
- C. **Registration.** Mobile Home Park management shall maintain a register of Park occupants containing names, site numbers and E-911 street numbers. The register shall be available for inspection by Federal, State and City authorities upon request during normal business hours.
- D. **Utilities.** Park management shall supply utility connections to mobile home sites. Homes shall be hooked up by professionals with proper City permitting.

820.15 Mobile Home Park General Design Standards.

- A. **Applicability.** The construction or expansion of a Mobile Home Park and its facilities shall conform to the design standards of this section and other applicable regulations.
- B. **State Regulations.** A Mobile Home Park shall conform to 30-A M.R.S.A., Section 4358 Regulation of mobile homes.
- C. **Park Boundaries.** A Park shall consist of a single parcel of land meeting the minimum lot size requirements in the Rural (R) zoning district and all standards set forth in this section.
- D. **Site Layout.** Each mobile home shall be placed on its own site with accessways and other amenities shown on the approved Mobile Home Park Plan meeting all standards to follow in this section. Mobile home sites shall be oriented in regard to natural features where practical.
- E. **Site Identification.** Each mobile home site shall prominently display a street number supplied by the City's E-911 Coordinator.
- F. **Density.** Mobile Home Park shall be allowed to exceed the maximum Net Residential Density permitted in its zoning district per Article 3 Zoning Districts as long as the provisions of this Section are met.
- G. **Landscaping.** Wooded areas and individual trees shall be preserved where practical. Vegetative cover such as grass shall be provided for land area not paved, graveled or occupied by a structure. Other planting shall be established to create an attractive setting for mobile home, promote privacy, minimize glare, and provide shade.
- H. **Buffering.** Vegetative screen shall be used to create a dense visual barrier around the park perimeter and around areas such as refuse storage enclosures and nonresidential areas. Screens should be coniferous trees or shrubs such as white cedar, balsam fir and spruce, since these provide a year-round buffer. If conditions are not suitable for planting coniferous screens, solid fencing not less than 6 feet high may be used.
- I. **Buffer Strip.** A fifty-foot wide vegetated buffer strip (minimum) shall be provided along all property boundaries that abut residential land with a zoned density of less than half of the proposed Mobile Home Park density. No structures, buildings or utilities may be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to a Mobile Home Park.

- J. **Open Space.** Mobile Home Parks shall provide a suitable, accessible common space for recreation equal to 10% of the total space for individual sites. The area required for a common wastewater disposal system may be counted only if it will be suitably landscaped for recreational purposes.
- K. **Infrastructure.** See 820.18 Mobile Home Park Infrastructure Standards.

820.16 Mobile Home Site Standards

- A. **Dimensions.** Mobile Home Sites shall meet the minimum requirements as described in Table 820.16A Mobile Home Site Standards.

820.16A Mobile Home Site Standards		
Type of Mobile Home Site	Minimum Area*	Minimum Width
Site contains no well or septic system	6,500 square feet	50 feet
Site contains drinking water well	12,000 square feet	75 feet
Site contains septic system	20,000 square feet	100 feet
Note: To be included in a Mobile Home Park, a Mobile Home Site shall be served by either a centralized domestic water system or a centralized sewer system or by both.		
*Land within wetlands, flood plains or easements shall not count toward the Minimum Area of a Mobile Home Site.		

- B. **Site coverage.** Enclosed buildings on a site shall not exceed 30% of the site area.
- C. **Depth.** A home site shall be deep enough to provide for minimum structure setbacks and for minimum area requirements in this Section.
- D. **Structure Setbacks.** Minimum setback distances for structures within Mobile Home Parks shall comply with the requirements in Table 820.16B Mobile Home Park Structure Setbacks.

820.16 B Mobile Home Park Structure Setbacks	
Location	Structure Setback Minimum Distance
Park accessway right-of-way line	20 feet (front yard setback)
Side or rear Mobile Home Site line	15 feet (side or rear yard setback)
Mobile Home Park boundary line or street right-of-way line (same as required for the Rural (R) zoning district)	40 feet (front yard setback)
	15 feet (side yard setback)
	30 feet (rear yard setback)

820.17 Mobile Home and Accessory Structure Standards.

- A. **Building Permits.** A building permit is required prior to construction or home installation in a Mobile Home Park. Plumbing or electrical permits are also needed. A written permit is also required for removing an installed mobile home from a Mobile Home Park.
- B. **Tax Certificates.** A mobile home shall not be removed from a site until a written certificate is obtained from the tax collector of the City of Ellsworth identifying the mobile home and stating that all property taxes applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from such taxation.
- C. **Home Standards.** At a minimum, homes shall conform to the Mobile Home Standards of the State of Maine. Mobile homes shall have a minimum living space of 500 square feet.
- D. **Home Pads.** A mobile home shall be set upon a mobile home pad consisting of at least a 12 inch thickness of gravel base material. Concrete or other durable pads approved by

the Planning Board may be used. The width and length of the mobile home pad shall at least match the dimensions of the mobile home placed upon it.

- E. **Skirting.** The vertical space from the mobile home pad to the mobile home frame shall be enclosed with a durable material.
- F. **Accessory structures** such as a garage shall be allowed upon mobile home sites provided the structure meets the provisions of these ordinances and all other applicable regulations.
- G. **Utility Buildings.** Each occupied mobile home site shall be provided with an accessory building with a minimum size of 64 square feet.
- H. **Screening.** Fuel tanks, bottled gas, dumpsters and other utility structures shall be placed in such a way that they are screened and protected from roadways.
- I. **Ruins.** Ruins caused by fire or other causes are not allowed within a Mobile Home Park. If ruins are created, such ruins shall be removed within 60 consecutive calendar days from the time of their creation.

820.18 Mobile Home Park Infrastructure Standards.

- A. **Accessways.**
 - i. Responsibility. Accessways within the Park shall be constructed, maintained and serviced by the Mobile Home Park management, including snow removal.
 - ii. Design Standards. Accessways serving home sites within the Park shall, at a minimum, conform to Site Road provisions of City of Ellsworth Chapter 56, Article 9 Street Design and Construction Standards. Accessways serving other uses shall conform to the appropriate Street Type classification in Article 9.
 - iii. Connections. Any park, proposed to generate average daily traffic of 200 trips per day or more must have at least two emergency access connections to public streets.
- B. **Lighting.** Streets and intersections shall be illuminated consistent with section 812 Exterior Lighting Standards exterior lighting standards.
- C. **Electric Supply**
 - i. Design. A Mobile Home Park shall contain an electrical system designed by an Electrical Engineer registered in the State of Maine. The system shall be installed and maintained in accordance with applicable State and City regulations. Electric substations, transformers, transmission lines, distribution line and meters shall be located or screened in such manner that they are not unsightly or hazardous.
 - ii. Distribution. Electrical distribution lines within the Mobile Home Park may be installed overhead or underground. All underground lines shall be protected by a rigid conduit or encased in concrete.
 - iii. Services. Electric service lines to each mobile home, accessory buildings, and Mobile Home Park service buildings shall be underground. The service lines shall be enclosed in a rigid conduit or encased in concrete.
- D. **Exterior Lighting.** Exterior lighting installed on a mobile home or mobile home site shall be installed such that it is not directed toward surrounding property, streets or other mobile home sites or the sky. It shall be consistent with section 812 Exterior Lighting Standards.
- E. **Fire Protection.** Water supplies for firefighting shall comply with Chapter 4 Fire Prevention and Protection Ordinance.

- F. **Parking.** At least two off-street parking spaces shall be provided for each mobile home site at a distance less than 100 feet from the home it serves. Off-street parking spaces shall be constructed with a minimum thickness of six inches of gravel base material. Such parking space shall have a minimum dimension of 9 feet width by 20 feet length.
- G. **Refuse.**
- i. The park management shall provide occupied mobile home sites with a conveniently located, watertight, vermin-resistant enclosure for refuse storage.
 - ii. Storage of refuse shall be enclosed to prohibit access by animals and to minimize health hazards, rodent harborage, insect breeding areas, accidents, wild fire, obnoxious odors or air pollution.
 - iii. Collection of refuse at regular intervals shall be the responsibility of the park management and shall be according to State of Maine and City regulations.
- H. **Signs.** Signs shall be consistent with the City of Ellsworth Sign Ordinance.
- I. **Stormwater.** A Mobile Home Park shall provide a surface water drainage system conforming to applicable provisions of Article 10 Stormwater Design and Construction Standards.
- J. **Wastewater Disposal.**
- i. Wastewater disposal systems shall comply with the Maine State Plumbing Code and be designed and installed under the direction of a Maine licensed professional.
 - ii. A Mobile Home Park located within 500 feet of a public sewer system shall provide an internal sewer system connected into the public system, per the Ellsworth Code of Ordinance Chapter 5 Sewer Ordinance. Any and all expenses incurred will be borne by the developer.
 - iii. Where public sewer is not available, a sanitary sewer system designed by an engineer or septic systems designed by a Licensed Site Evaluator shall be provided.
 - iv. Wastewater disposal systems serving the Mobile Home Park shall be constructed and maintained under the responsibility of the park management.
- K. **Water Supply.**
- i. Each mobile home shall be provided with an adequate, safe, potable water supply of at least of 90 gallons per day per bedroom.
 - ii. Water supply systems shall be installed and maintained in accordance with the State of Maine Plumbing Code.
 - iii. The Administrator may require a hydrogeologic assessment in cases where site considerations or development design indicate potential of adverse impacts on ground water quality or supply.
 - iv. A Mobile Home Park located within 200 feet of a public water main shall provide a water system connected into the public system. Any and all expenses incurred will be borne by the developer.

820.19 **Emergency Mobile Home Parks.**

- A. **Purpose.** Emergency Mobile Home Parks may be constructed for mass emergency housing in the event of a natural or man-made disaster.
- B. **Permitting.** An Emergency Mobile Home Park construction permit shall be issued for one year and may be extended for terms of six months as needed. The

Ellsworth Code Enforcement Officer shall be responsible for granting or denying the permit.

- C. **Plan Submittal.** A plan drawing showing the Emergency Mobile Home Park shall be submitted to the Ellsworth Planning Board within 60 calendar days after issuance of the Emergency Mobile Home Park Construction Permit.
- D. **Standards.** Maximum effort must be made to adhere to all Design Standards of this Section and all City Ordinances. However, since time is important in establishing an Emergency Mobile Home Park, facilities may be installed in a temporary manner provided that the public health and safety is not imperiled.
- E. **Location.** Emergency Mobile Home Parks are allowed within any zoning district other than districts within the Shoreland Zone (Article 4).
- F. **Temporary Use.** An Emergency Mobile Home Park shall not be converted to a permanent Mobile Home Park unless all provisions of this ordinance are met.

821 YARD SALES

For purposes of this section, a yard sale means a public sale at a dwelling at which personal items belonging to the residents of the dwelling are sold. Yard sale includes garage sales, porch sales, tag sales, and the like. Items purchased elsewhere expressly for resale at a yard sale are prohibited. Commercial outdoor sales activities are prohibited. Yard sales exceeding three consecutive days or held more frequently than three times in a calendar year will be considered a commercial use and require a Site Development Plan review.

822. VISIBILITY TRIANGLE

822.1 Visibility Triangle. In all zoning districts, with the exception of Downtown, no obstruction taller than 3 feet which obscure the view of automobile drivers shall be placed on any corner lot within a visibility triangle area as defined below in section 822.2.

822.2 Measuring the Visibility Triangle. The visibility Triangle is a triangular area of land on a lot formed by drawing from the edge of the travel way one line perpendicular to and one line parallel to the property line or accessway for a specified length and one line diagonally joining the other two lines per the illustration below using as an example the intersection of a residential street with a commercial road. The specified length of the perpendicular and parallel lines is dependent on the types of intersecting accessways as shown in Table 822.2 below.

Table 822.2 Length of Visibility Triangle Perpendicular and Parallel lines in feet per intersecting Accessway Types (per Article 9 Street Design and Construction Standards)

	Transit and Regional	Rural	Retail	Mixed Use & In town	Commercial	Alley	Residential	Private Residential	Site	Commercial driveway	Residential driveway
Transit and Regional	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Rural	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Retail	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Mixed Use & In-town	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Commercial	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Alley	10	10	10	10	10	10	10	10	10	10	10
Residential	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Private Residential	10	10	10	10	10	10	10	10	10	10	10
Site Road	10	10	10	10	10	10	10	10	10	10	10
Commercial Driveway	10	10	10	10	10	10	10	10	10	10	10
Residential Driveway	10	10	10	10	10	10	10	10	10	10	10

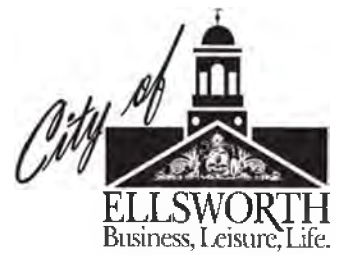
*In the Urban, Industrial, Business Park, and Commercial zoning districts, that measurement is 15 feet.

822.3 Exception. In certain situations such as, but not limited to, a signalized intersection or if the slope allows for adequate visibility, the administrator may allow an obstruction taller than three feet to be located within the visibility triangle if it is demonstrated that safety is not impacted.



City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 9
Street Design and Construction Standards



ARTICLE 9 STREET DESIGN AND CONSTRUCTION STANDARDS

901 PURPOSE AND APPLICABILITY

901.1 Purpose. This Article is to promote public health, safety and welfare by establishing design and construction standards for roads and accessways for developments within the City of Ellsworth.

901.2 Applicability. This Article shall apply to:

- A. Developments that generate new trips that utilize roadways and intersections affecting directly or indirectly one or more traffic signals, and
- B. The construction and reconstruction of all streets and accessways except that this Article does not apply to the following, as defined, Commercial Driveways and Residential Driveways except as specifically noted in sections 902.7, 908.1.K, 910.2 A & B, 910.3 A & B, 915, and 916.2 of this Article; Commercial farming activities as defined by M.R.S.A. 17 §2805; and Timber Harvesting as defined in M.R.S.A. 12 under the Forest Practices Act.
- C. State-owned roads are exempt from this Article.

901.3 Interpretation. Nothing in this Article shall be construed to prevent the construction of accessways which meet higher standards or use improved methods or materials of equivalent or higher quality.

902 PLAN SUBMISSIONS

902.1 Submittal Contents. Streets shall be presented on site plans showing, at a minimum:

- A. A location map.
- B. The location, width, typical cross-section, horizontal and vertical alignments (plan & profile) of all proposed streets, accessways, sidewalks, and bikeways.
- C. The location of all existing streets and accessways within 600 feet, walkways and sidewalks within 200 feet, and bikeways within 500 feet of the proposed street or accessway.
- D. The location of any pedestrian ways, easements, rights-of-way, and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement or right-of way, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that s/he will maintain such streets or ways year-round until they are accepted by the City.

- E. A note describing the property owner association for any accessway serving more than one property owner that is to remain temporarily or permanently in private ownership.

903 INSPECTION AND ENFORCEMENT

903.1 Permit and Notification. Prior to start of the construction or reconstruction of a road, a Road Permit is needed with the following exceptions:

- A. Construction and reconstruction of a public street by the City of Ellsworth.
- B. Road work conducted in response to an emergency when there is a risk of significant property damage or there is an imminent threat to the health, safety or welfare of the citizens. Work conducted under such circumstances shall be reported to the Code Enforcement Officer within 48 hours of its occurrence.

903.2 Additional Permits. Any permit required by this Article shall be in addition to any other permit required by law or ordinance.

903.3 Fee. Road Permit fees shall be set by the City Council in the Permit Fee schedule.

903.4 Inspection. To ensure that all requirements of this Article are met during construction and reconstruction of a road, the developer shall contact the Code Enforcement Officer prior to the following stages of improvement so an inspection can be conducted:

- A. Preparation and clearing of right-of-way;
- B. Sub-base course;
- C. Aggregate base course;
- D. Storm water provisions constructed; and
- E. Completed project.

903.5 Inspector. The inspections will be conducted by the Code Enforcement Officer and Highway Foreman and/or a professional retained by the City. If the City retains a professional to inspect the improvements, the applicant shall be assessed a fee to cover the cost of such inspections.

903.6 Sign-off. The Code Enforcement Officer shall approve each of the improvement inspection stages before the developer may continue with the work.

903.7 Modification during Construction. If at any time before or during construction of the road it is demonstrated to the satisfaction of the Code Enforcement Officer and Highway Foreman that unforeseen conditions make it necessary or preferable to make minor modifications to the location or design of the road, the Code Enforcement Officer may allow such changes provided that the modifications are within the spirit and intent of the approval(s) under which it was granted. The Code Enforcement Officer shall issue any authorization under this section in writing and shall provide a copy to the approving authority.

903.8 Noncompliance. If it is found upon inspection of the road improvements that they have not been constructed in accordance with approved plans and specifications,

the inspector shall so report to the Code Enforcement Officer. The Code Enforcement Officer shall then notify the applicant and if necessary, the bonding company, and take all necessary steps to preserve the City's rights under the guarantee, security or bond. If, in the opinion of the Code Enforcement Officer, the improvements are not corrected in a timely manner, the City may use any Financial Security provided by the applicant to correct the improvements to the satisfaction of the City.

904 WAIVERS AND ALTERNATIVE DESIGNS

904.1 The Code Enforcement Officer is not authorized to modify the standards of this ordinance. The CEO may grant design waivers only as expressly permitted in this Article.

904.2 The Planning Board may waive portions of the standards of this Article only as expressly permitted in this Article.

- A. The Planning Board may consider waivers if they will not result in a more adverse impact on public safety than the existing conditions.
- B. The Planning Board shall state the reasons for any waiver or alternative design in its decision.
- C. Alternative design standards proposed by applicants must be compliant with sound engineering practice, as reflected in publications by the Maine Department of Transportation, Americans with Disabilities Act (ADA), American Association of State Highway and Transportation Official (AASHTO), and/or The Institute of Transportation Engineers (ITE).
- D. The Planning Board may grant necessary waivers of particular design standards for road construction or reconstruction where any of the following conditions exist within the project limits:
 - i. Right-of-way width is insufficient to reconstruct the road to meet standards;
 - ii. Physical limitations, such as encroaching buildings or steep grades make construction within the appropriate design standards impractical;
 - iii. Traffic volumes are less than 400 average daily traffic (ADT).
 - iv. The road serves a Special Use, as defined.

904.3 The City Council. The City Council has the authority to waive the design standards of this Article by using the following procedure:

- A. **Written Recommendation.** The City Council shall consider written input from the Administrator, the Ellsworth Road Commissioner, and the Highway Foreman as applicable.

- B. **Public Hearing.** The Council shall hold a public hearing.
- C. **Determination.** The City Council shall make a determination that a departure from the design standards of this Article is in conformity with the spirit and the intent of this Article, related to applicable City adopted Plans, based on the particular set of circumstances, and with section 904.

904.4 Public Safety. No waivers or departures from the standards of this Article shall be approved if such modifications will have more adverse impact on public safety than the existing conditions.

904.5 Final Plan Record. All waiver and/or alternative design decisions shall be recorded on the final road plan, site plan and/or subdivision plan.

905 MAINTENANCE, REPAIR AND RECONSTRUCTION OF STREETS

905.1 Private Ways. Maintenance for any private accessway serving more than one property owner shall be managed by written property owner association by-laws. Copies of by-laws shall be submitted with road permit applications when applicable.

905.2 Street Work by the City. The repair or reconstruction by the City of an existing city-owned street should meet or exceed (1) the current road design standards; or (2) the road standards to which the street was last constructed or reconstructed.

905.3 Repair Work by a Developer. The repair by a developer of an existing City-owned street shall meet or exceed (1) the current road design standards; or (2) the road standards to which the street was last constructed or reconstructed.

905.4 Reconstruction of a City-owned Street by a Developer. Reconstruction of a City-owned street by a developer must be approved by the City Council, as follows:

- A. **Scoping Process.** When a development is expected to generate more than 250 ADT, the City Planner, in consultation with the Ellsworth Police Chief and Code Enforcement Officer, shall meet with the developer to determine the scope of the potential traffic impact area to be studied. The area to be studied may include the first major intersection and road segments in between in each direction from the development direct accessway(s) where it is determined that there are potential safety, capacity or other traffic-related issues. The proposed off-site improvements shall meet, to the greatest extent possible, all applicable road construction standards of this Article that can take place within the existing right-of-way.
- B. **Planning Board.** In the approval process, the Planning Board shall state an opinion as to whether the proposed off-site road improvements have a more adverse impact on public safety than the existing conditions or shall cause unreasonable traffic congestion or unsafe condition to the improved street, abutting existing street or to the proposed street. The Planning Board shall

present in writing its findings and recommendations to the City Council.

If the Planning Board finds that a proposed road does not meet the design standards of this Article and does not grant a waiver, it may approve an application upon the condition that the road design must be approved by the City Council before any construction may begin.

- C. **City Council Approval.** In making its decision, the City Council shall consider the particular set of circumstances as presented to the Planning Board, the findings and recommendations of the Planning Board, and follow the process established in section 904.3.

906 STREET TYPES AND GENERAL DESIGN PURPOSES

Using the functional classification and criteria presented in Table 906, all new roads and roads proposed for reconstruction shall be assigned a Street Type by the City Planner upon consultation with the Code Enforcement Officer and the Police Chief.

Table 906 STREET TYPES AND GENERAL DESIGN PURPOSES			
Name		Purpose and Special Criteria	Examples
1.	Transit Roads*	To provide long-distance continuous routes between Ellsworth and the surrounding service centers such as Bangor/Brewer, Bucksport, and Bar Harbor. These State-owned roads are designed to move large number of vehicles at high speeds.	Bucksport Rd from the City line to Christian Ridge Rd. Bangor Rd from the City line to the Union River Bridge.
2.	Regional Roads*	To collect traffic from rural areas and surrounding communities and deliver it to the City center and the arterial network. The priority for these roads is vehicle mobility at moderate speed with some pedestrian/ bikeways, especially within the Growth Area.	North St, Surry Rd, Bayside Rd, North Bend Rd, and Mariaville Rd. Main Street from the Fairground Rd to the City line.
3.	Rural Roads*	To collect traffic from rural neighborhoods and deliver it to the City Center and/or to the larger collector and arterial road network. The priority for this type of road is to preserve and enhance the existing rural character of the areas it serves with some pedestrian amenities, especially within the Growth Area.	Buttermilk Rd, Red Bridge Rd, Winkumpaugh Rd, Happytown Rd, Gary Moore Rd and Nicolin Rd. Union St from McDonald Ave to the City line.
4.	Retail Streets*	To serve Ellsworth’s retail and service areas. This type of commercial arterial has many intersections and driveways needed to access businesses. The design of these roads considers mobility and access, as well as to provide for other modes of transportation. Pedestrian access is considered secondary to vehicular mobility/access to adjacent businesses.	High St, Myrick St, Downeast Hwy, Douglas Hwy, and High St. State St from Central St to the Fork in the Rd.

Table 906 STREET TYPES AND GENERAL DESIGN PURPOSES

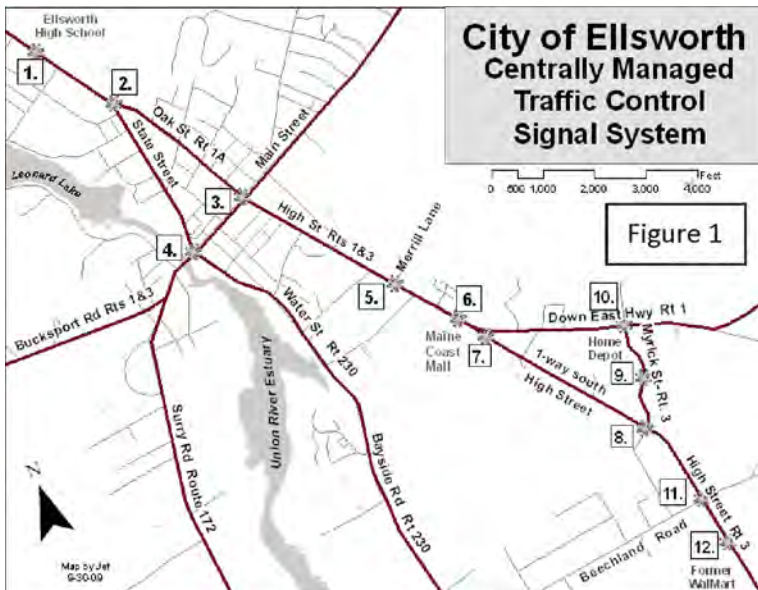
Name		Purpose and Special Criteria	Examples
5.	Mixed-Use and In Town Streets*	To connect Ellsworth’s retail, service areas and neighborhoods, as well as provide pedestrian-friendly access to these areas. These streets are typically located in mixed-use, commercial, downtown, retail and residential areas with pedestrian activity. These streets may have on-street parking depending on the type and intensity of adjacent commercial land uses. These streets emphasize a variety of travel choices including pedestrian and bicycle.	Oak St, Water St, Foster St Beechland Rd, Christian Ridge Rd, , Washington St, Birch Ave, Park St, Spruce St, Deane St, Franklin St, Elm St, and Hancock St. Bucksport Rd from Christian Ridge Rd to the Surry Rd. Main St from Grant St to the Fairground Rd.
6.	Commercial Streets*	To provide vehicle and heavy truck access to targeted commercial and industrial areas	Commerce St, Vittum Rd, Industrial Rd.
7.	Alleys	To provide a secondary means of access to lots. <i>Designed for 0 to 50 ADT. Pavement may be waived.</i>	Store Street.
8.	Residential Streets	To provide an acceptable, if not optimal environment for a residential neighborhood. Such roadway shall be designed to carry no more traffic than is generated on the street itself. The road shall be designed to carry less than 1,000 ADT. <i>Designed for 0 to 999 ADT. Pavement may be waived if in the Rural Area and less than 100 ADT.</i>	Altons Avenue
9.	Private Residential Street	To provide for very low volume of traffic at low speed and to provide the safest and most desirable environment for a residential neighborhood. Such roadway shall be designed to carry no more traffic than is generated on the street itself. Streets designated private residential street must serve less than 50 ADT. Roads constructed under these standards shall remain privately-owned and maintained unless the road is improved to standards and accepted by the City Council. <i>0 to 50 ADT. Pavement may be waived. These must remain private unless upgraded to higher standards.</i>	Overlook Way
10.	Site Roads	10.1. Internal: To provide site circulation within a parking lot serving a building, a development site under one ownership, a consolidated development, or a phased development generating more than 100 peak hour trips (PHT) and having more than 100 parking spaces. 10.2. Cross-access: To provide connectivity between parking lots. 10.3. Commercial Access: To provide access to a commercial development not to exceed 100 PHT.	Parking lot of shopping mall or other large place of business Business to business. Public way to business.

****Definition not dependent on ADT***

907 STREET DESIGN STANDARDS (See also Section 916 Accessway Construction Standards)

907.1 General Provisions.

- A. **Minimum Standards.** The design standards are considered minimum standards and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances except as otherwise specified.
- B. **Alternative Design Standards.** Proposed street plans may use road design standards other than presented in Table 908 **Design Standards** if the road will serve infill residential development within the Ellsworth designated Urban Compact area or cluster residential development within the Growth Area serviced by City water and sewer; and will generate a volume of traffic of less than 400 average daily trips, with a maximum speed limit of 25 mile per hour. The minimum right-of-way shall comply with the standard presented in Table 908 **Design Standards**. This alternative road design shall be approved by the Planning Board and shall be designed by an Engineer per the standards provided in the latest editions of the “Geometric Design of Highway and Streets” and “Guidelines for Geometric Design of Very Low Volume Local Roads” published by the American Association of State Highway and Transportation Officials (AASHTO).
- C. **Additional Right-Of-Way Width** at intersection approaches may be required for such special elements as, but not limited to, raised median channelization and turning lanes.
- D. **Apron.** No connector and/or street apron shall extend into the street farther than the base of the curb or beyond the gutter line.
- E. **The Centrally Managed Traffic Control Signal System (CMS)** (Figure 1) provisions found in this section and in sections **907.1. K and M, and 909.3.B. and C** shall apply to developments affecting one or more traffic signals, or developments that generate new trips that utilize roadways and intersections affecting directly or indirectly one or more of the traffic signals.



The City of Ellsworth CMS consists of, but is not limited to, the following traffic signals:

1. State Street at High School
2. State Street and Oak Street
3. High Street and Main Street
4. Water Street and Main Street
5. High Street at Merrill Lane
6. High Street at north entrance to Maine Coast Mall
7. High Street at south entrance to Maine Coast Mall
8. Route 3 at Myrick Street
9. Myrick Street at Home Depot
10. Myrick Street at Route 1
11. Route 3 at Beechland Road
12. Route 3, south of Beechland Road

The goals of the CMS are to reduce delays and manage travel times for vehicles traveling through these intersections by optimizing progression of traffic (minimize stops) on the artery roadways (State Street, High Street, Water Street, Route 1, Route 3, and Myrick Street) and minimizing congestion. Any proposed traffic signals or changes to the CMS shall be reviewed by the City of Ellsworth Traffic Engineer. Review cost shall be borne by the applicant. The City Engineer shall submit a written report to the City Planner for final approval by the Administrator.

- F. **Capacity.** Streets and accessways which can be expected to carry traffic to and from neighboring streets and developments, shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by them. A traffic impact analysis of the proposed project on the capacity, level of service and safety of adjacent streets prepared by an Engineer shall be submitted. The analysis shall include anticipated trip generation, current and impacted Level of Service, sight distance relative to posted speed, crash history and linear distance from adjacent driveways and accessways on the same road. The Administrator may waive this requirement for development generating less than 50 ADT, and for Residential or Private Residential Streets if, in the Administrator's opinion, the impact will be small enough to warrant such a waiver.
- G. **Centerline.** The centerline of the roadway shall be the centerline of the right-of-way unless the Administrator determines there is a logical reason for it to be shifted.
- H. **Corner Easements** may be required to provide and maintain the safety sight distance.
- I. **Driveways Exempt.** Per 901.2 Commercial and residential driveways are exempt from complying with this article unless specified otherwise.

J. **Emergency Access.** The Ellsworth Fire Department shall be consulted for written approval of proposed perimeter access. Such access shall comply with Chapter 4 Fire Prevention and Protection Ordinance.

K. **Level of Service.**

- i. No Development shall cause a reduction in Level of Service, as defined in **Table 908.1 Level** of Service Definition by more than one grade level and in no case shall the Level of Service be reduced to the level of “D” or below.
- ii. Any proposed changes resulting from the application of the LOS requirements to the CMS such as but not limited to, changes in cycle lengths and offsets, Time-of-Day schedules, phasing, splits, clearance intervals, and other programming or equipment shall comply with the review process in **section 907.1.E** and be consistent with the goals of the **CMS per section 907.1.E**. In some cases the LOS on the side streets may be programmed to be less than LOS “D” to maintain the overall goals of the CMS, as recommended by the City Traffic Engineer.

Table 908.1 Level of Service Definitions
LOS A: Free flowing traffic. Drivers, passengers and pedestrians have high level of comfort and convenience. Each individual is unaffected by other users and is able to maneuver about safely.
LOS B: Stable flow. Other users are noticeable because there is some affect on behavior. Less freedom to maneuver than in level A.
LOS C: Still in the range of stable flow, but actions of others may significantly affect the individual. Safe speeds are determined by factoring in the behavior of others. Maneuvering about is more difficult and the levels of comfort and convenience decline.
LOS D: High density traffic but still with a stable flow. Maneuverability and speed are restricted by other traffic. Users experience low levels of comfort and convenience. Pedestrians have difficulty at time with crossing.
LOS E: Operations are at or near capacity level and often unstable. All speeds are greatly reduced. Maneuverability is significantly hampered. Levels of comfort, convenience and safety are dangerously low and frustration runs high.
LOS F: Forced or breakdown flow occur because the system is over capacity. Lines queue up and move in a stop-and-go waves that are highly unstable. This can be considered a failing grade for the intersection or road segment. Service breaks down and gridlock can occur.

L. **Multiple frontages.** Where a lot has frontage on two or more accessways including Residential and Commercial Driveways, the primary access to the lot shall be provided from the accessway where there is less traffic congestion or fewer potential hazards to traffic and pedestrians.

M. **Queuing.** Intersections shall be of a design and have sufficient capacity to provide for necessary queuing.

- i. Sufficient vehicle storage length shall be based on a determination of the 95th percentile queue (in vehicles), as calculated by the latest Synchro/SimTraffic traffic modeling software used by the MDOT. In determining required vehicle storage lengths for turning lanes, consideration shall also be made for the average (50th percentile queue) for the adjacent through lane in order to assist in maintaining mobility on the through lane. Where feasible, the storage length for turning lanes shall meet the greater of the calculated 95th percentile queue length or the average - 50th percentile queue length, of the adjacent through lane.
- ii. Queuing at traffic control signals located within the CMS shall be designed to minimize congestion on the artery roadways to maintain progression and minimize stops.

Note: The 95th percentile queue is the queue length (in vehicles) that has only a 5-percent probability of being exceeded during the analysis time period.

N. **Reserved area.** When a proposed street or accessway borders an existing narrow street (not meeting the width requirements of the standards for streets in these regulations), or when an adopted city plan indicates plans for realignment for widening of a street that will require use of some of the abutting land, the plan shall indicate the reserved area and the subject land deeded to the City of Ellsworth or to the State of Maine.

O. **Traffic management.** Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning elements such as, but not limited to, lanes, traffic directional islands, frontage roads, and traffic controls within public streets.

P. **Traffic Counts.** Developers may request traffic counts for the signalized intersections from the City Planner or designee. A fee will be charged to the developer based on the number of time periods requested. The fee scheduled is set by the Council.

907.2 Construction Materials/Paving.

A. **Accessway Paving.** All accessway entering a paved street shall be paved at least within the street right-of-way and preferably to 30 feet beyond the street right-of-way.

B. **Curbing.** All new accessway entering a curbed street shall be curbed on both sides to a distance of at least 30 feet from the street right-of-way, with materials matching the street curbing. Sloped curbing is required around all raised channelization islands or medians.

C. Curbing Within the Urban Core Area.

- i. Curbing and gutters are required where subsurface drainage systems are present and recommended along accessways with traffic volumes greater than 100 ADT or high demand of on-street parking.
- ii. Curbing shall be granite in high use areas and concrete in all other places.

D. Paving. All new roads shall be paved with the exception of the two conditions presented below:

- i. The Planning Board may waive the paving requirement for Private Residential Roads and Alleys if the applicant can demonstrate that potential erosion issues have been adequately addressed; or
- ii. The Planning Board may waive paving requirement if the street or accessway is located in the Rural Area and traffic counts are determined to be less than 100 ADT, and if the proposed road grade will not result in the loss of existing road base or surface, or cause an adverse environmental impact because of erosion, dust, phosphorus loading, sediments or other factors to sensitive areas such as water bodies or significant natural areas.

NOTE: Unpaved roads shall under no circumstance be accepted by the City of Ellsworth as a public road.

908 Street Design Standards.

TABLE 908 Street Design Standards

<u>Street Designation</u> →	<u>Transit and Regional</u>	<u>Rural</u>	<u>Retail</u>	<u>Mixed Use & In-town</u>	<u>Commercial</u>	<u>Alley</u>	<u>Residential</u>	<u>Private Residential</u>	<u>Site Road</u>
Street Type (#):	1 & 2	3	4	5	6	7	8	9	10
Functional Class	Arterial/Collector	Collector	Collector	Collector	Local	Local	Local	Local	Local
Estimated Ultimate Volume (ADT)	DOT	NA	NA	NA	NA	≤ 50	> 50	≤ 50	NA
Maximum design speed (MPH)	DOT	45	35	30	35	10	30	15	20
Minimum Right-of-way Width (ft)	60	60	50	50	60	20	50	40	NA
Minimum Travel Way Width (ft)	DOT	22	22	22	24	10	20	18	22
Minimum width of shoulders (ft)	DOT	4	4	4	5	NA	3	2	3
Min. Centerline Radius (ft)	DOT	ENG	510	200	510	NA	150	75	100
Minimum Tangent Between Curves of Reverse Alignment (ft)	DOT	ENG or 400	ENG or 300	100	100	NA	50	NA	NA
Min. Angle of Street Intersections (degrees)	DOT	60	60	60	60	60	60	60	60
Minimum Curb/ Entrance Radius (ft)	DOT	40	40	40	60	20	40	20	35
Minimum ROW Radii at Intersections (ft)	20	20	20	20	40	NA	20	NA	20
Minimum Grade (%)	DOT	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Maximum Grade (%) (may be exceeded for 100' or less)	DOT	11	12	12	12	15	12	14	12
Max. Grade within 50' of Intersection (%)*	DOT	3*	3*	3*	3*	3*	3*	3*	3*
Crown % (Paved)	DOT	2	2	2	2	1	2	1	2
Crown % (Gravel w/o superelevation)	NA	4	NA	NA	NA	4	4	4	NA

Key to Table:

DOT: Overseen by Maine Department of Transportation.

ENG: Must be designed by Professional Engineer

N: Not Required

NA: Not Applicable

R: 3* Max. Grade within 50' of intersection up to 6% may be allowed if road geometric design is properly adjusted to enhance safety. Must be designed by a Professional Engineer if > 3%.

909 STREET SYSTEM DESIGN STANDARDS

909.1 Connectivity. The design of developments requiring Planning Board Approval shall strive to achieve connectivity with other compatible developments to logically extend the street system into surrounding areas. Property owners providing for future connectivity shall record:

- A. An easement allowing access to and from the adjacent development.
- B. The design of the street shall conform to the standards of this Article. The design shall ensure efficient and safe vehicular operation and pedestrian movements for internal circulation and for traffic mobility on the adjacent roadway.
- C. All street stubs shall be provided with temporary turn-around or cul-de-sacs unless specifically exempted by the Planning Board, and the restoration and extension of the street shall be the responsibility of any future developer or abutting landowner.
- D. The Planning Board may waive the requirement for connectivity following recommendation by the City Planner. This recommendation shall be made in consultation with the Ellsworth Police Chief and Code Enforcement Officer.

909.2 Dead-end/Turnaround.

- A. All streets shall provide adequate vehicle turnaround.
- B. Any dead-end street of more than 300 feet in length shall include a vehicle turnaround consisting of a cul-de-sac, a T or a Y ending. At the terminus, a cul-de-sac shall have no less than 120 feet outside diameter of the traveled way. If the T or Y configuration is used, there shall be a minimum length of 70 feet on each leg of the T or Y at the terminus. The 70-foot distance is measured from the centerline of the closed street that is dead-ending. An adequate easement in line with the street to provide continuation of the street where future development is possible should be provided.

909.3 Traffic Control Devices.

- A. **Signs.** Appropriate traffic control signage shall be placed within the site and at intersections, on pavement, on medians and on channelization islands.
- B. **New Traffic Signal.** All new traffic signals shall be equipped with emergency vehicle preemption equipment, traffic counter apparatus, and battery back-up systems, as well as meet the equipment general specifications sheet as provided by the City Engineer.

- C. **Upgraded Traffic Signal.** All traffic signals being upgraded as part of a Maine DOT permit or Planning Board approval shall be equipped with emergency vehicle preemption equipment, traffic counter apparatus, and battery back-up systems, as well as meet the equipment general specifications sheet as provided by the City Engineer.
- D. **Connection to the CMS.** New, existing, or upgraded traffic signals shall be inter-connected and be coordinated, as deemed necessary by the City of Ellsworth Traffic Engineer.

910 ACCESS MANAGEMENT

910.1 Safety Sight Distance.

- A. **General.** Accessways onto City streets shall be designed in profile and location to provide the required safety sight distance measured in each direction.
- B. **Measuring.** Sight distances shall be measured from the driver's seat of a passenger vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3½ feet, to the top of an object 4½ feet above the pavement.
- C. **Sight Distance.** A sight distance of 10 feet for each mile per hour of posted speed limit shall be maintained or provided. For example, a 50 mile per hour posted road will require 500 feet of sight distance.
- D. **Waiver.** The Planning Board may lower the safety sight distance if an Engineer can provide adequate documentation that a shorter sight distance will provide adequate safety and following recommendation by the City Planner, in consultation with the Ellsworth Police Chief and the Ellsworth Code Enforcement Officer.

910.2 Functional Area of Intersection

- A. New accessways including Commercial Driveway and Residential Driveways shall not be permitted within the functional area of an intersection unless:
 - i. No other reasonable access to the property is available, and
 - ii. The accessway does not create a safety or operational problem, and
 - iii. The applicant agrees in writing to close the accessway if and when alternative accessway becomes available that is more consistent with the

standards of this article.

- B. Where no alternatives exist, construction of an accessway including a Commercial Driveway and a Residential Driveway may be allowed as far as possible from the functional area of the road intersection as a non-conforming accessway. Property access will be restricted to the road with the expected lowest traffic and/or lowest functional classification and shall be closed within six months of when any conforming access becomes available.
- C. Accessways shall be at least as wide as required by this ordinance for their entire length.

910.3 Alignment/Offset/Spacing.

- A. **Adjacent Properties** under the same ownership shall be considered as a single property for application of accessway spacing, including the spacing of Commercial and Residential Driveways.
- B. **Multiple Accessways.** One accessway including Commercial and Residential Driveways per development is preferred. Application for multiple accessways for a single development shall conform to the spacing standards of this Article. Multiple accessways may be allowed if one or more of the following criteria are met:
 - i. Separation of standard vehicles from heavy trucks or emergency vehicles;
 - ii. Two one-way accessways that, in combination, serve ingress and egress to the development;
 - iii. Multiple accessways enhance the safety of the abutting roadway and improve on-site traffic circulation.
- C. **Alignment.** To reduce turning movement conflicts, accessways on undivided streets should be aligned with those accessways across the road. If this is not possible, separation between accessways shall provide for maximum safety and mobility.

910.4 Cross and Shared Access.

- A. **Commercial Developments** shall provide for cross access and/or shared access to connect adjacent properties in order to reduce curb cuts and to preserve the capacity and safety of the road system.
- B. **Deeded Access.** Property owners establishing shared and/or cross access shall record:
 - i. An easement allowing cross access to and from the adjacent properties;

- ii. A joint maintenance agreement defining maintenance responsibilities of property owners of the shared accessway and cross access system.
- C. **Temporary Access.** Property owners that provide shared accessways and/or cross access may be granted a temporary approval, where necessary, to provide reasonable access until such time as permanent shared access and/or cross access are provided with adjacent properties. Within six months after construction of a joint use or cross access, property owners utilizing such accessway shall close and remove any existing temporary accessway provided for in the interim.
- D. **Future Cross Access.** Developments may be required to construct a paved stub-out to the property line in anticipation of a future accessway. The design of the cross access corridor or joint access shall conform to the standards of this Article. The design shall ensure efficient and safe vehicular operation and pedestrian movements for internal circulation and for traffic mobility on the adjacent roadway.
- E. **Maintenance.** Private cross and shared accessways are not intended to be publicly maintained.
- F. **Parking reduction.** Properties that provide for shared access to commercial lots shall benefit from a 5% reduction in parking spaces and properties that provide cross access (connectivity) shall also benefit from a 5% reduction in parking spaces. The total combined reduction in parking spaces shall not exceed 7% and must be recommended to the Planning Board by the City Planner.
- G. **Service roads.** Subdivisions with frontage on a State Routes 1, 1A, and 3 may be required to be designed with access to the lots from a service road.
- H. **Waivers.** The Planning Board may waive the requirement for cross and/or share access following recommendation by the City Planner. This recommendation shall be made in consultation with the Ellsworth Police Chief and the Ellsworth Code Enforcement Officer.

911 LANDSCAPING AND STREETScape.

- A. Developments requiring Planning Board Approval and located with the City Urban Core Area shall provide for consistent streetscape and landscaping design.
- B. Developments requiring Planning Board Approval located on High Street shall provide for design consistent with the High Street Beautification Study.
- C. Cul-de-sacs located in a wooded area prior to development shall maintain a stand of trees at the center of the cul-de-sac if such trees are healthy and have a diameter at breast height of 8 inch. In the event the trees have been

harvested, the proposed development plan should include landscaping of the center of the cul-de-sac.

912 SIDEWALKS AND BIKEWAYS

For developments requiring Planning Board Approval, reasonable and safe provision shall be made to create pedestrian and/or bicycle connections between points intended for, and suitable for such uses. Provisions including, but not limited to sidewalks, curb ramps, pedestrian crossings and/or bikeways shall be within the development boundary and/or abutting street rights-of-way, and as required below:

- A. Development whose location can clearly further the implementation of Ellsworth pedestrian and/or bicycle facilities per the Ellsworth Downtown Plan - Bicycle-Ped section shall do so by providing for sidewalk and/or bikeway facilities.
- B. Sidewalks and/or bikeways shall be constructed if the development is located within 200 feet of an existing sidewalk or bikeway, in the Ellsworth Downtown Area, or abutting a Street Type # 4 or #5, or when necessary to provide direct or indirect access to public facilities, and retail and financial services.
- C. Sidewalks and/or bikeways easement(s) shall be provided if the development is located within the Ellsworth Urban Core and/or within 500 feet of an existing pedestrian and/or bikeway facility.
- D. Easement provided for pedestrian and bicycle facilities shall be recorded with the Hancock County Registry of Deeds.
- E. Minimum sidewalk width is 5 feet.
- F. The Planning Board may waive part or all of the requirements of this section if there is justification to do so. Financial hardship shall not be considered a justification. **See Section 904 Waiver.**

913 STREET LIGHTING FOR ROADWAYS AND SIDEWALKS

Reserved.

914 STREET NAMING AND PROPERTY NUMBERING

Reserved.

915 ACCESSWAYS IN THE SHORELAND ZONE

- A. Regulation of accessways in the Shoreland Zone pertains to all accessways including Residential Driveways and Commercial Driveways.

- B. New permanent accessways shall be set back at least 100 feet from the normal high-water line of great ponds and the Union River and 75 feet from the normal high-water line of the Union River Estuary and other water bodies and wetlands unless no reasonable alternative exists as demonstrated by the applicant. If no reasonable alternative exists, the accessway shall be set back as far as possible, but no less than 50 feet on slopes up to ten 10%. Where slopes exceed 10%, setback shall be increased by 25 feet for each 10% increase in slope. This paragraph shall not apply to approaches to water crossings nor to accessways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity.
- C. New accessways are prohibited in the Resource Protection District except to provide access to permitted uses within the District, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the District, in which case the accessway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- D. Existing State and City streets may be expanded within the legal road right-of-way regardless of their setbacks from a water body.

916 ACCESSWAY CONSTRUCTION STANDARDS

(See also Table 908 Design Standards)

The following standards shall apply to the construction and repair of accessways and related features such as drainage systems and culverts.

916.1 General Construction Standards for Streets.

- A. Streets shall be crowned or graded to provide surface drainage.
- B. All plans for new or modified streets shall include an erosion and sedimentation control plan for describing temporary and permanent erosion control measured to be provided. Temporary and permanent maintenance requirements shall be provided in the plan. Final design plans shall reference the erosion and sedimentation plan by note.
- C. In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty into an unscarified buffer strip at least 50 feet in width between the outflow point of the ditch or culvert and the normal high-water line of a water body. Where slopes exceed 10%, the buffer strip shall be increased 25 feet for each 10% increase in slope.
- D. Buffer strips less than prescribed above may be approved upon a clear showing by the applicant that an exception is necessary and that appropriate techniques will be used to avoid sedimentation of the water body. Such

techniques may include, but are not limited to, the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body.

- E. Ditches, culverts, bridges, dips, water turnouts, and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- F. Ditch relief (cross drainage) culverts, drainage dips, and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch.
- G. Prior to final completion and acceptance of a road, or the issuance of a Certificate of Occupancy, the Engineer shall provide to the Code Enforcement Officer a letter stating that the site work was evaluated and was built, according to approved plans to the maximum extent possible and will likely function as intended.
- H. The Code Enforcement Officer may request as built-plans.
- I. The laying of the pavement course, where required by this ordinance, for residential developments is optional until one these conditions are met: 1) at least 30% or three of the residential lots are occupied, whichever is greater, or 2) three years has passed since the first Certificate of Occupancy was issued.

916.2 General Construction Standards for Residential and Commercial Driveways.

- A. Commercial and Residential Driveways shall be crowned or graded to provide surface drainage.
- B. Commercial and Residential Driveways shall include an erosion and sedimentation control plan describing temporary and permanent erosion control measured to be provided.
- C. In order to prevent accessway surface drainage from directly entering water bodies, Commercial and Residential Driveways shall be designed, constructed, and maintained to empty into an unscarified buffer strip at least 50 feet in width between the outflow point of the ditch or culvert and the normal high-water line of a water body. Where slopes exceed 10%, the buffer strip shall be increased 25 feet for each 10% increase in slope.
- D. Buffer strips less than prescribed above may be approved upon a clear showing by the applicant that an exception is necessary and that appropriate techniques will be used to avoid sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body.

- E. Ditches, culverts, bridges, dips, water turnouts, and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- F. Ditch relief (cross drainage) culverts, drainage dips, and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the accessway or ditches gains sufficient volume or head to erode the Commercial Driveway, Residential Driveway, or ditch.

916.3 Minimum Thickness of Material After Compaction.

TABLE 916.3A STREET MATERIALS					
Road Type	Transit and Regional	Rural, Mixed Use/ In-town, and Retail	Commercial and Site Road	Residential Street	Private and Alley
Material	When it is anticipated that a road will carry significant truck traffic or heavy axel loads, an engineer shall design a thicker structure than these minimum standards.				
Aggregate Sub-base Course	*ENG	18"	18"	16"	12"
	Layers of Sub-base shall be placed in 2 equal thickness lifts & compacted.				
Aggregate Base Course	*ENG	3"	3"	3"	3"
Gravel Surface Course	NA	3" (where allowed)	NA	3"	3"
*ENG: Shall be designed by an Engineer Gravel Course Road: Where a gravel surface course is allowed by other portions of this Article, the above "Gravel Surface Course" may be used instead of hot bituminous pavement.					

TABLE 916.3B HOT BITUMINOUS PAVEMENT*				
Road Type	Transit and Regional	Rural, Mixed Use/ In-town, and Retail	Commercial and Site Road	Residential Street, Private**, and Alley**
Material	When it is anticipated that a road will carry significant truck traffic or heavy axel loads, an engineer shall design a thicker structure than these minimum standards.			
Total Thickness	**ENG	3 ¼"	3 ¾"	3 ¼"
Wearing Course	**ENG	1"	1 ¼"	1"
Base Course	**ENG	2 ¼"	2 ½"	2 ¼"
*For waiver and alternative provisions refer to 907.2.D and 916.5.F.iii. **ENG: Shall be designed by an Engineer				

916.4 Preparation and Construction.

- A. **Marking.** Before any clearing has started on the right-of-way, the centerline and sidelines of the new street shall be staked or flagged at 50 foot intervals.
- B. **Clearing.** Before grading is started, the entire area to be improved within the right-of-way shall be cleared of all tree stumps, roots, branches, ledge, large boulders, and other objectionable material.
- C. **Grubbing.** All organic materials shall be removed to a depth of 2 feet below

the sub grade of the roadway. Rocks and boulders visible at sub-grade shall also be removed to a depth of 2 feet below the sub grade of the roadway. On soils which have been identified as not suitable for roadways, the subsoil shall be removed from the street site to a depth of at least 2 feet below the sub grade and replaced with material meeting the specifications for gravel aggregate sub-base course.

- D. **Side Slopes.** Except in a ledge cut, side slopes shall be no steeper than a slope of 3 feet horizontal to 1 foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Unsuccessful seeding must be redone to grow a catch of grass. Where a cut results in exposed ledge, a side-slope no steeper than 4 feet vertical to 1 foot horizontal is permitted.
- E. **Underground Utilities,** when proposed shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.
- F. **Cleanup.** Following street construction, a thorough cleanup of stumps and other debris from the entire street right-of-way shall be made. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

916.5 Bases and Pavement

- A. **The Aggregate Sub-base Course** shall be mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls or clay and other deleterious substances. Aggregates for sub-base shall not contain particles of rock which will not pass the 6-inch square mesh sieve. The gradation of the part that passes a 3-inch square mesh sieve shall meet the grading requirements in Table 916.5A.
- B. **The Aggregate Base Course** shall be mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls or clay and other deleterious substances. Aggregates for sub-base shall not contain particles of rock which will not pass the 2-inch square mesh sieve. The gradation of the part that passes a 3-inch square mesh sieve shall meet the grading requirements in Table 916.5B.
- C. **Gravel Surface Course** shall be a mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes the 2 inch square sieve shall meet the grading requirements in Table 916.5C.

Table 916.5A Aggregate Sub-base Course	
Sieve Designation	% By Weight Passing Square Mesh Sieves
6" square mesh	100%
1/4 inch	25-70%
#40	0-30%
#200	0-7%
Table 916.5B Aggregate Base Course	
Sieve Designation	% By Weight Passing Square Mesh Sieves
2" square mesh	100%
1/2 inch	35-75%
1/4 inch	25-60%
#40	0-25%
#200	0-5%
Table 916.5C Surface Course Gravel	
Sieve Designation	% By Weight Passing Square Mesh Sieves
2" square mesh	95 - 100%
1/2 inch	30-65%
#200	7-12%

D. **Recycled Asphalt Pavement (RAP).** RAP may be used in lieu of a gravel surface course if approved by the Administrator. RAP shall be ground, hot mix asphalt, properly compacted and be a minimum thickness of 3 inches.

E. **Pavement Joints.** Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even vertical joint. Joints shall be tack coated prior to placement of adjoining pavement.

F. **Pavements.**

- i. Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for Hot Mix Asphalt, 19.0 mm Superpave or equivalent if wearing course is required or Hot Mix Asphalt, 12.5 mm fine Superpave or equivalent if only one course required.
- ii. Minimum standards for the wearing layer of pavement shall be the Maine Department of Transportation specifications for Hot Mix Asphalt, 9.5 mm Superpave or equivalent.
- iii. Alternatives to the above standards may be approved by the Planning Board if the applicant can demonstrate their long term durability and appropriate application. The intent of this modification is to allow the use of alternative surface covers such as permeable concrete, permeable hot mix asphalt, or other treatments which are intended to reduce the impervious impact on a site. The intent is to encourage the use of Low Impact Development and materials.

G. **Sidewalk Material.** Concrete sidewalks are preferable. The Planning Board may consider allowing bituminous sidewalks in low use areas. Minimum sidewalks design standards:

i. **Concrete Sidewalks:**

- a. The sand or crushed aggregate base shall be no less than 6 inches thick.
- b. The concrete shall be reinforced with 6 inch square, number 10 wire mesh (or equivalent) and shall be no less than 4 inches thick. Concrete shall have a compressive strength of at least 4000 psi.

ii. **Bituminous Sidewalks:**

- a. The crushed aggregate base course shall be no less than 8 inches thick.
- b. The hot mix bituminous travel way surface course shall be no less than 2 inches after compaction.
- c. Paved sidewalks shall be Hot Mix Asphalt, 12.5 mm or 9.5 mm Superpave or equivalent.

916.6 Curbs and Gutters.

- A. **Granite Curbing** shall be installed on a thoroughly compacted gravel base of 6 inches minimum thickness. Granite Curb shall be set in concrete.
- B. **Concrete Curbing** may be used in place of granite curbing in locations not directly adjacent to, or meeting existing granite curbing and where approved by the Planning Board. Concrete curbing shall be poured in place or pre-cast members. Pre-cast members shall be installed on a thoroughly compacted gravel base of 6 inches minimum thickness and the base shall be set with in-place concrete.
- C. **Bituminous Curbing, where allowed,** shall be installed on the base course of the travel way. The specified travel way width above shall be measured between the curbs.

917 STREET ACCEPTANCE AS PUBLIC WAYS

917.1 Intent. This section establishes guidelines and procedures to be followed by the City Council for the acceptance of properly constructed streets for maintenance by the City of Ellsworth. Streets being considered for acceptance must be connected to a public way and be paved.

917.2 Application. A request for street acceptance shall be made to the City Manager and include the information listed below. The City Manager and/or the City Council reserves the right to request additional information, as deemed

appropriate, including, but not limited to, professional/peer review, street construction costs, and financial security.

- A. **Request.** A written request from the developer/owner or the abutters to place the street acceptance request on the City Council Agenda.
- B. **Petition.** A petition signed by a simple majority of the property owners who have the legal right to use the road supporting or acknowledging the request.
- C. **Deed.** A copy of the deed(s) with accurate legal description of the subject road.
- D. **Engineering Report.** An engineer's report assuring that the street is built to the standards in effect at the time of construction or Planning Board approval, or description of deficiencies, proposed improvements and standards.
- E. **Construction Plan.** A time schedule and financing plan for any needed construction.
- F. **Financial Security.** The City Council may assess a construction cost or financial security for final construction tasks such as, but not limited to, final course pavement.
- G. **As Built Drawings.** Prior to final acceptance of a street as a public way, the City Council may require detailed "as built" construction drawings showing a plan view, profile, typical cross-section of the street and existing streets within 200 feet of any proposed intersections, as well as all utilities and infrastructure. "As built" construction drawings shall be prepared by an engineer.
- H. **Code Enforcement Officer Report.** The City of Ellsworth Code Enforcement Officer, in conjunction with the City Highway Foreman, shall inspect the road to record its condition, verify the engineer's report, and submit a written report to the City Manager. Inspection by the Code Enforcement Officer and Highway Foreman should take place between May 1 and November 1.
- I. **Utilities.** If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.
- J. **Professional/Peer Review Cost.** When required, the applicants shall pay any professional/peer review costs to the City who in turn will pay the consultant.

917.3 Decision Criteria.

- A. **City Council Review.** The City Council shall consider all applicable information prior to making a decision, including City street standards, applicant submittals, professional/peer review reports, public benefit criteria, occupation rates and City economic factors.

- B. **Economic Factors.** Given the number of unaccepted streets in Ellsworth and associated maintenance cost in connection with their acceptance, the City Council will make any final acceptance decision dependent on the availability of fiscal resources, budgetary constraints, and other criteria as established in this policy.
- C. **Pre-agreement.** In consideration of economic factors, developers who intend to build a street and desire to ask the City Council to take ownership of the road may submit a Letter of Intent to the City Planner. The letter shall include the road type, location, uses that it will serve, and a construction schedule. The City Council may consider the Letter of Intent at their next regular Council Meeting and whether to take ownership of the road once it has been constructed and to the standards of this Article. The City Council may include a time limit for the adoption of any street.
- D. **Street Standards.** Streets shall meet the following design and Construction Standards.
- i. For streets approved after May 7, 2009, the City Council will ensure strict compliance with the design standards of this Article.
 - ii. For streets approved between August 20, 2007 and May 7, 2009, the City Council will ensure strict compliance with the design standards of Chapter 35 (repealed on May 7, 2009) in effect at the time of Planning Board Approval.
 - iii. For streets approved between July 19, 1999 and August 19, 2007, the City Council shall aim to have the streets meet the design standards of Chapter 35 in effect at the time of Planning Board approval. In certain exceptional circumstances the City Council may consider alternative standards.
 - iv. For streets built prior to the adoption of Chapter 35 (September 19, 1977) and before July 18, 1999, the council may consider alternative standards.

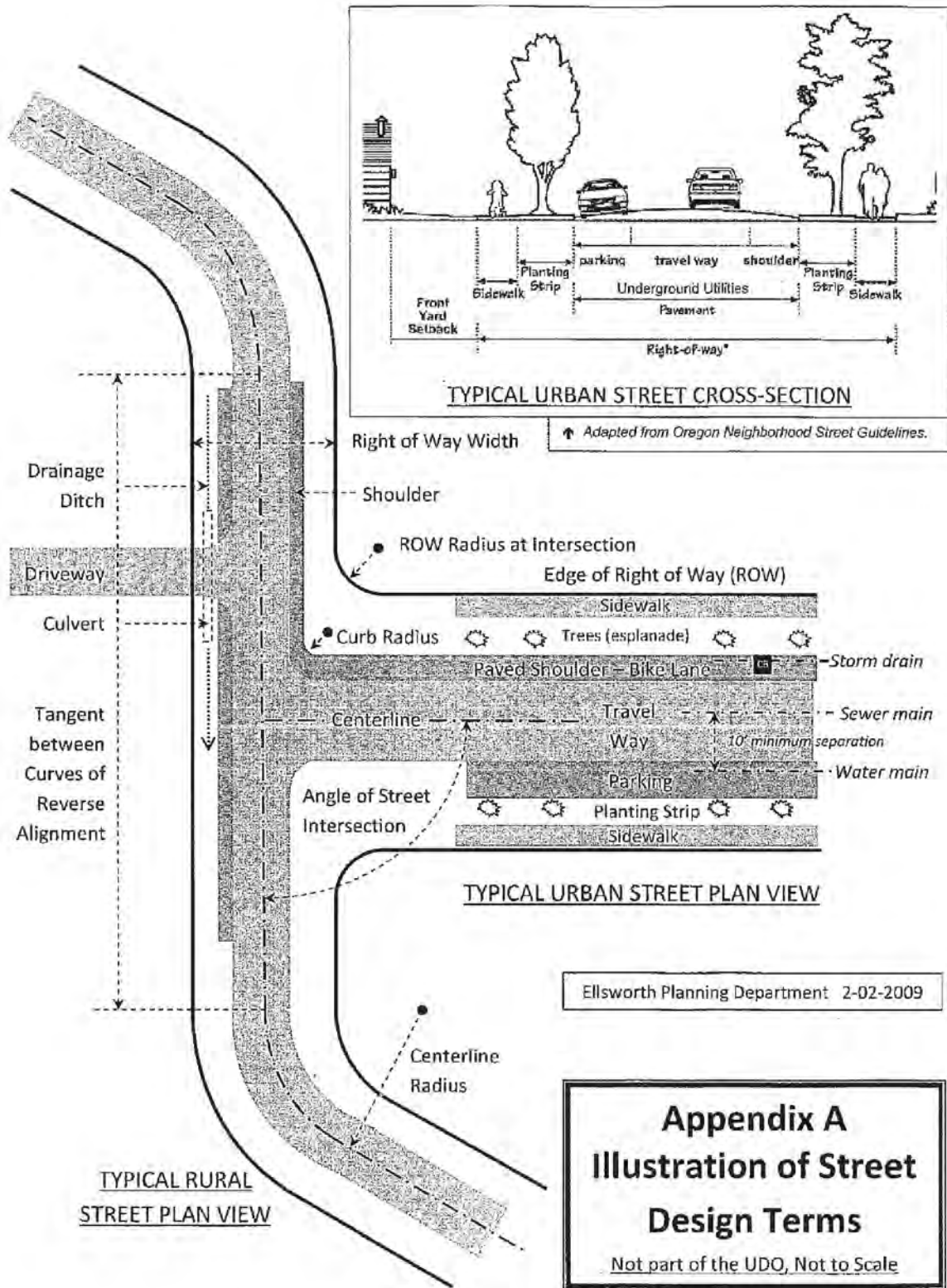
In cases where the creation of a street is not linked to a Planning Board approval, other means will be used to best establish the creation of the road such as but not limited to deeds.

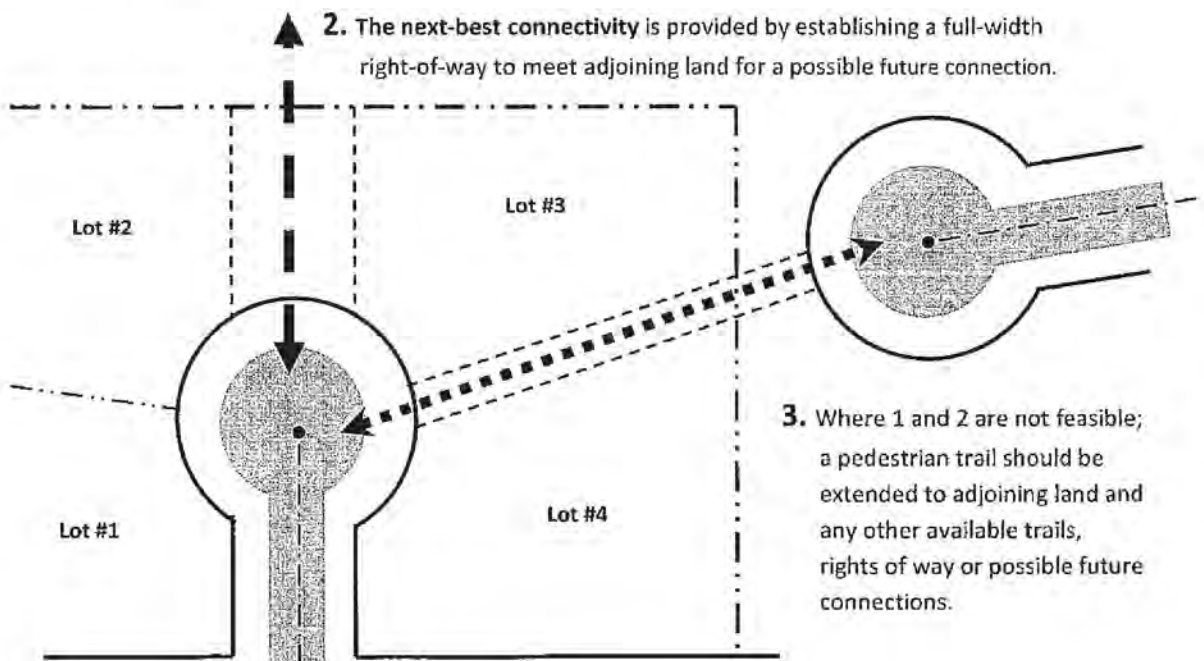
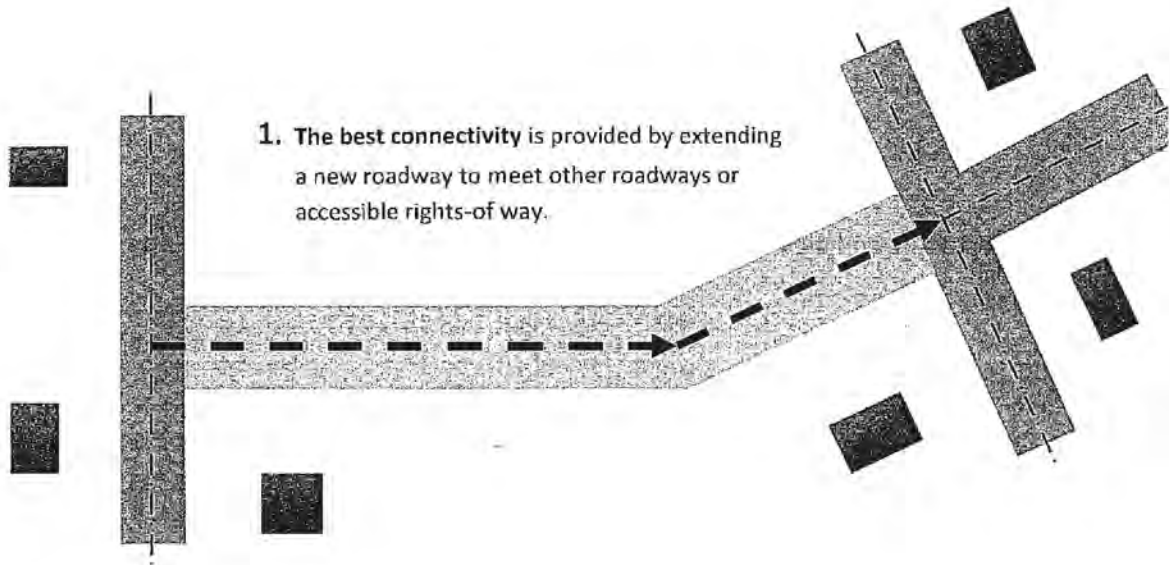
- E. **Alternative Street Standards.** In the event the City Council agrees to consider alternative design standards, it will use the standards published by the *American Association of State Highway and Transportation Officials* (AASHTO) – most recent version. When AASHTO standards are applied, the design of the street shall, in the opinion of the City Council, provide adequate access to public service vehicles (i.e. fire, plow and garbage trucks, school buses, etc.) and shall not pose a threat to the health, safety, and welfare of the residents of Ellsworth. The City Council may assess a construction cost fee and/or financial security for any part of the road.

- F. **Growth Area Streets.** The City Council shall accept Growth Area streets, meeting standards as public ways if they serve commercial or mix-use developments and improve mobility, safety, stormwater runoff, or exemplify smart growth principles as presented in the International City/County Management Association (ICMA) *Getting to Smart Growth* and *Getting to Smart Growth II* publications.
- G. **Occupation.** The City Council shall accept streets meeting standards as public ways when occupied as follows:
- i. Growth Area Streets having at least three lots with occupied dwelling units; having at least 30% of all its residential lots with occupied dwelling units; and having an average road frontage not to exceed 250 feet per lot.
 - ii. Rural Area Streets having at least three lots with occupied dwelling units; having at least 60% of all its residential lots with occupied dwelling units; and having an average road frontage not to exceed 400 feet per lot.

NOTE: Properties abutting the intersection of the street under consideration for acceptance and an existing publicly maintained street do not count toward the occupied legal lot threshold calculations.

- H. **Public Benefit.** The City Council may accept streets meeting standards as public ways when the occupation threshold calculations above are not met if the acceptance of the road will clearly improve mobility, safety, stormwater runoff, or the development exemplifies smart growth principles as presented in the International City/County Management Association (ICMA) *Getting to Smart Growth* and *Getting to Smart Growth II*.





3. Where 1 and 2 are not feasible; a pedestrian trail should be extended to adjoining land and any other available trails, rights of way or possible future connections.

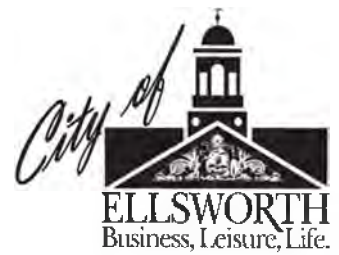
Appendix B
Illustration of Street Connectivity
Not part of the UDO, Not to Scale

Ellsworth Planning Department 2-02-2009

City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 10
Stormwater Management
Design and Construction Standards

Amended November 19, 2012



1001 PURPOSE AND APPLICABILITY

1001.1 Purpose. The purpose of this article is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Ellsworth by establishing requirements and procedures to control the adverse impacts associated with stormwater runoff.

1001.2 Applicability. This Article shall apply to all minor and major use site development plan projects and to subdivisions. See **Section 1003.3** for specific applicability thresholds regarding Flooding and Quality Control Standards.

1001.3 Interpretation. Nothing in this Article shall be construed to prevent the construction of stormwater management infrastructure which meet higher standards or use improved methods or materials of equivalents or higher quality.

1002 PLAN SUBMITTALS

1002.1 Documents. The stormwater management system shall be presented in a narrative and on site plans showing at a minimum:

- A. A narrative describing the details of how the stormwater will be managed.
- B. The contour lines shown on the plan shall be at an interval of no more than 2 feet.
- C. For the Basic Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section 8.C and provide submittal for both the erosion and sedimentation control plan and the inspection and maintenance plan.
- D. For the General Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section 8.D with the exception of Section 8.D.(5) and as further specified in this Article.
- E. For the Phosphorus Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section 8.D with the exception of Section 8.D.(3) and as further specified in this Article. Note that the Phosphorus Standards can be substituted for the General Standards, per Chapter 500, by recommendation of the City Planner.
- F. For the Flooding Standards, provide:
 - i. Pre- and post-development sub-catchments, time of concentration lines, general water flow lines and ground cover.
 - ii. Show all existing and proposed culverts, swales, catch basins, detention or retention area and conveyance devices.
 - iii. Site specific temporary and permanent Best Management Practices

(BMP's) to be used for the project.

- G. A stormwater management system maintenance plan and referring note stated on the plan, as well as a Copy of the Declaration and Covenants for any homeowners association charged with the long-term maintenance of the stormwater system.
- H. Any related State and Federal permits or permit application.
- I. A copy of the Notice of Intent for Construction Activity filled out and submitted to the MDEP.

1002.2 Required Submittal Copies.

- A. CEO-approved project: The applicant shall submit two copies of all material to the Code Enforcement Officer.
- B. Planning Board-approved project: The applicant shall submit copies of the following material to the Administrator **per Article 6 Site Development Plan Section 602.7** unless otherwise specified:
 - i. The stormwater management system plan and narrative per this Article.
 - ii. Pre- and post-development conditions and drainage diagrams.
 - iii. Documentation of application for all related State and/or Federal permits.
 - iv. A summary of the stormwater design calculations.
 - v. Three (3) copies of the stormwater calculations and any State or Federal approvals.
 - vi. The City Planner reserves the right to request more copies as the need may arise.

1003 STORMWATER MANAGEMENT DESIGN STANDARDS

1003.1 Stormwater Management. Adequate provision shall be made for disposal of all stormwater generated, and any drained groundwater through a management system of swales, culverts, under-drains, buffers, storm drains, etc. The stormwater management system shall be designed to conduct stormwater flows to existing drainageways. The intent of this article is for stormwater management systems to provide pollutant removal; cooling; channel protection; and flood control.

Where a street or site is traversed by a stream, river, or surface water drainageway, or where the Administrator determines that surface water runoff to be created should be controlled, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water.

1003.2 Professional Design. Stormwater management plans and systems shall be designed by an engineer registered in the State of Maine.

1003.3 Design Criteria and Applicability Thresholds.

- A. **Design Criteria:** All stormwater management systems required by this Article shall be designed consistent with the following documents, as applicable. The DEP applicability thresholds are not the thresholds of this ordinance:
 - i. M.R.S.A 38 § 420-C and 420-D;
 - ii. The most recent version of the Maine Department of Environmental Protection Stormwater Management Rules (Chapters 500 and 502) and with the following MDEP volumes:
 - a. *Volume I: Stormwater Management Manual,*
 - b. *Volume II: Phosphorus Control in Lake Watershed: A Technical Guide to Evaluating New Development; and*
 - c. *Volume III: BMPs Technical Design Manual.*

Wherever regulations specified in this Article differ from the above-listed documents, the standards of the more restrictive applicable standard shall prevail.

B. Flooding Control Standard.

- i. Applicability.
 - a. The Ellsworth Flooding Control Standard (described below) applies to all projects that result in 20,000 s. f. or more of impervious surface, as defined herein, on a parcel of land.
 - b. The Administrator may apply this Flooding Standard to smaller projects where stormwater generated appears to present a threat to neighboring property or water courses. In this decision, the

The objective of the Ellsworth Flooding Control Standard is to limit flooding of neighboring properties and water courses to pre-development levels.

Administrator shall consider the project's proximity to property lines, topography and downstream conditions and whether it would pose any health or safety threats regarding neighboring properties, roads or drainageways.

- ii. Standard – Requirement. The Ellsworth Flooding Control Standard shall be met and requires post-development runoff locations and types to provide the same or less of an impact as those existing in the pre-development condition. Post-development discharge points from a property shall be in the same general location and be of the same type (i.e.: sheet flow, shallow concentrated, etc) as the pre-development discharge locations and types or create an improvement to existing conditions. The Flooding Standard requires a stormwater management plan designed to limit peak flow to predevelopment levels for 2.7 inch and 5.4 inch, 24-hour duration, storm events-

Where an accessway is to be built or upgraded, and may become a public way, the crossing of the stream by the accessway shall be designed to accommodate a 7.1-inch storm event.

- iii. Exception to the Standard – Requirement. If all downstream drainageways have the capacity and stability to receive the project's runoff plus any off-site runoff also passing through the system, and drainage easement are secured and the Administrator also makes determination that the areas expected to be flooded by the 2.7 inch and 5.4 inch, 24-hour storm do not pose any health and safety issues such as, but not limited to, the flooding of primary access roads to the project and public roads or an undue burden (i.e. significant difficulty or expense) to property owners likely to suffer specific harm.

C. Quality Control Standards:

- i. Applicability Threshold. The Ellsworth Quality Control Standards (described in D and E below), apply to all development and redevelopment projects that are:
 - a. In the Shoreland Zone, or;
 - b. Discharging within the direct watershed of Card Brook, or;

- c. Associated with High Pollutant Land Uses as defined herein, or;
 - d. Resulting in a parcel of land having 10% or more of impervious area as defined herein.
- ii. Excluded Areas. Impervious and other areas of land surface that are not changed during the course of a development or redevelopment project may be excluded from any quality controls required for the project.
 - iii. BMP's. Basic Quality Control Standards (described in MDEP documents above) apply to all projects regardless of exemptions described below:

The objective of the Ellsworth Quality Control Standard is to limit degradation of water quality in lakes and streams through treating runoff from Shoreland Zone areas, high pollutant uses and impervious surfaces exceeding 10% of the area of each watershed. The 10% untreated area is allocated by parcel or parcels involved in an applicable project. Studies have shown that watersheds with 10% to 15% impervious cover tend to have impaired water quality.

Exemptions.

The following exemptions from Ellsworth Quality Control Standards may be claimed, where applicable. Exempted area shall not include development associated with High Pollutant Land Uses, be within the Shoreland Zone with the exception of the General Development District, or be within the direct watershed of Card Brook.

- a. **10% Exemption.** Up to 10% of any parcel may be exempted from the Ellsworth Quality Control Standards. All previously developed impervious surfaces with untreated stormwater count toward the 10%. After this exemption is claimed, the remainder of the lot may not use the exemption, even if it is divided from the developed parcel. Land subdivision projects may only apply the exemption to lands that will be held in common such as roadways and conservation areas.
- b. **Extended 10% Exemption.** Where on-site treatment is not practical or desired, additional development area may be exempted from the Ellsworth Quality Control Standards similar to the 10% exemption where appropriate development rights are secured and recorded via permanent easement for lands within the same stream watershed at a 9:1 ratio of lands conserved from pervious development to lands with pervious development exempted from the Ellsworth Quality Control Standards.

Where on-site quality treatment and conservation easements are not practical or desired, the developer may pay a fee in lieu of constructing the required quality controls. The fee payment shall be made to the Ellsworth Fund for Improvements to Water Quality

to be used for within the same stream watershed, or within an impaired stream watershed. The fee is based on 105% of the estimated cost of constructing quality controls on-site and excludes the costs associated with designing such a system. The developer shall submit to the City calculations determining the proposed fee amount. The cost to the City to hire an engineer to review of the proposed fee amount shall be entirely the responsibility of the developer.

- c. **100% Redevelopment Exemption.** Projects in the Ellsworth Urban Core and within the direct watershed of the Union River Estuary (below the Leonard Lake Dam), as shown on the map entitled “City of Ellsworth Urban Core in the Direct Watershed of the Union River Estuary,” may exempt up to 100% of the existing impervious area with untreated stormwater that is being redeveloped from the Ellsworth Quality Control Standards.
 - d. **50% Redevelopment Exemption:** Projects outside of areas eligible for the 100% exemption above may exempt up to 50% of the existing impervious area with untreated stormwater that is being redeveloped from the Ellsworth Quality Control Standards.
- D. **Union River/Leonard Lake Water Quality Control:** Projects located outside the watershed of a Great Pond or within the watershed of Leonard Lake as shown on the Official City of Ellsworth Watershed Map, shall comply with the most recent version of the Maine Department of Environmental Protection Stormwater Management Rules General Standards, in addition to Basic Standards and the Ellsworth Flooding Control Standards where applicable.
- E. **Lake and Stream Water Quality Control:** Projects located within the watershed of a Great Pond and outside the watershed of Leonard Lake as shown on the Official City of Ellsworth Watershed Map, shall comply with the most recent version of the Maine Department of Environmental Protection Stormwater management Rules Phosphorus Standards in addition to Basic Standards and the Ellsworth Flooding Control Standards where applicable.

The Planning Board shall not, as part of the required phosphorus control plan, allow an increase in phosphorus loading beyond the level allowed by the Maine Department of Environmental Protection. Furthermore, no phosphorus mitigation credits or compensation are allowed unless the project triggers the Stormwater Law or Site Law.

- 1003.4 **Drainage easements** for existing water courses or proposed drainageways shall be provided at least 30 feet wide, conforming substantially to the lines of existing natural drainage.
- 1003.5 **Upstream drainage.** The stormwater management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved planned developments not yet built and shall include a surplus design capacity factor of 25% if the potential exists for an increase in upstream runoff.
- 1003.6 **Downstream Capacity.** The storm drainage shall not overload existing or planned storm drainage systems downstream.
- 1003.7 **Catch basins** shall be installed where necessary and located at the curb line of accessways or as required elsewhere.
- 1003.8 **Subsurface drainage.** Where soils require a subsurface drainage system, the drains shall be installed and maintained along with the stormwater drainage system.
- 1003.9 **Outlets** shall be stabilized against soil erosion by using the Maine Department of Environmental Protection Maine Erosion and Sediment Control BMPs (latest edition) such as stone riprap or other suitable materials to reduce stormwater velocity. Outlets shall not be located closer than 20 feet of a property line.
- 1003.10 **Landscaped Buffer:** Detention or retention areas created for the stormwater management system shall be landscaped and buffered from adjacent properties if the total area (including the inside of the embankments) is greater than 10,000 square feet.
- 1003.11 **Level Spreader:** Level spreaders are not permissible if the receiving land of the diffused stormwater has a grade of 2% or greater.
- 1003.12 **Erosion Control:** An erosion and sedimentation plan shall be submitted as part of any Stormwater Management Plan and for all projects. The procedures outlined in the plan shall be implemented during the site preparation, construction and clean-up stages of the project. The applicant/owner shall be responsible for implementing the plan.
- 1003.13 **Safety Standards:** Public safety shall be accounted for when designing and maintaining stormwater ponds, facilities, BMPs, culverts and other related facilities as follows:
- A. **Safety shelf and Side Slopes.** There shall be a safety shelf around the perimeter of the detention pond to reduce the risk of someone falling into the pond. The safety shelf requirement may be waived if slopes are 4:1(horizontal:vertical) or gentler.
 - B. **Dams and Embankments.** If there are, or there exist the potential for development of, home and businesses in the downstream “dam break”

floodplain, then the dams and embankments shall be designed to withstand overtopping during floods larger than they were designed to detain (6-inch rain over 24 hours).

- C. **Outlets.** When feasible, outlets shall be placed away from areas of heavy public use. Outlets are screened so that the public will not be drawn to it. Thick shrubs, grading techniques, and aesthetic fencing or railing can also be used.
- D. **Fencing.** Fencing of ponds is not generally desirable, but may be required by the Administrator. A preferred method is to manage the contours of the pond to eliminate drop offs and other safety hazards.
- E. **Spill Ways.** The principal spillway opening shall not permit access by small children, and end walls above pipe outfalls greater than 48 inches in diameter shall be fenced to prevent a hazard.

1003.14 **State Permitting.** All projects shall meet the requirements of Maine Department of Environmental Protection permitting.

1003.15 **Inspection.** Prior to final completion and acceptance of the site work portion of a project, or the issuance of a Certificate of Occupancy, the Design Engineer of the stormwater management system shall provide to the Code Enforcement officer a letter stating that they have examined the site and are satisfied that the site and storm-water system are built according to approved plans and will function as intended. The Code Enforcement Officer may require as built-plans where changes have been made from original designs.

1004 CONSTRUCTION MATERIALS AND STANDARDS

1004.1 General. All Construction shall be done in a workmanlike manner and be free from defects and deficiencies. The Code Enforcement officer shall examine the workmanship and have the authority to require removal or replacement of materials not considered satisfactory.

1004.2 Stormwater Management Best Management Practices (BMP's) shall be designed, built and maintained as specified in the Maine Department of Environmental Protection Maine Erosion and Sediment Control BMPs (latest edition).

1004.3 Drain Inlet Alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the City Highway Foreman.

1004.4 Changes in Alignment. Catch Basins shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, catch basins shall be placed at a maximum of 400-foot intervals.

1004.5 Manholes. Manholes shall be a precast concrete truncated cone section

construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Manhole sections shall have lapped joint construction and support H-20 loading (unless higher loading required for specific application). Bases may be cast in place 3,000 psi 28 day strength concrete or may be of precast, reinforced concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed with frames and covers meeting the requirements of ASTM A48 Class 30 for gray iron castings. Covers shall be non-rocking, 24-inch diameter and have 3-inch lettering indicating the use (i.e. DRAIN). Frames and Grates shall be of heavy duty construction weighing not less than 300 pounds and machined on both vertical and horizontal seating surfaces.

1004.6 Precast Concrete Catch Basins. ASTM C 913, precast, reinforced concrete; designed according to ASTM C 890 for A-16 (AASHTO HS20-44), heavy-traffic, structural loading, with provision for Bell-and-spigot or tongue-and-groove joints formed on machine rings to ensure accurate joint surfaces.

1004.7 Joint Sealants. ASTM C 990, bitumen or butyl rubber.

1004.8 Grade Rings. Include 2 or 3 reinforced-concrete rings, of 6-inch to 9-inch total thickness that match 24-inch diameter frame and grate.

1004.9 Maximum Trench Width at the pipe crown shall be the outside diameter of the pipe plus 2 feet.

1004.10 Pipe Connectors. ASTM C 923, resilient, of size required, for each pipe connecting to base section.

1004.11 Pipe Sizing. The minimum pipe size for any culvert or storm drainage pipe shall be 15 inches. Smaller pipes may be incorporated into a storm-water management plan if required for detention or retention requirements. If smaller pipes are used the developer shall provide a maintenance plan and schedule that will allow the pipes to provide adequate flow.

1004.12 Pipe (culvert) Bedding and Backfill. Pipes shall be bedded and backfilled in a fine granular material, containing no stones larger than 3 inches, lumps of clay, or organic matter, reaching a minimum of 6 inches below the bottom of the pipe extending to 6 inches above the top of the pipe. Bedding material shall be graded per **Table 1004.12**.

Table 1004.12 Culvert Backfill Material	
Sieve Designation	% By Weight Passing Square Mesh Sieves
3-inch square mesh	100%
1/4 inch	25-70%
#40	0-30%
#200	0-7%

1004.13 Reinforced Concrete Pipe. Reinforced concrete pipe shall meet the requirements of ASTM Designation C-76 (AASHTO M 170). Pipe classes shall be required to meet the soil and traffic loads with a safety factor of 1.2 on the .01-inch crack strength with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C 443-70. Perforated concrete pipe shall conform to the requirements of AASHTO M 175 for the appropriate diameter. Elliptical pipe

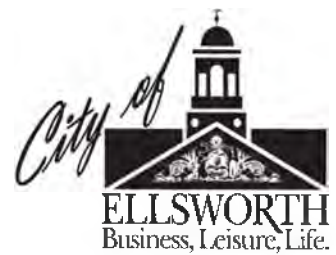
shall conform to the requirements of AASHTO M207M/M207. Pipe arch shall conform to the requirements of AASHTO M206M/206.

- 1004.14 Corrugated Metal Pipe.** Aluminum coated corrugated steel pipe and special fittings such as elbows, tees, and wyes shall conform to the requirements of the Maine Department of Transportation Standard Specifications, Subsection 707.10 (Type 2), Aluminum Coated (Type 2) Corrugated Steel Pipe. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than 5%. Fittings shall be fabricated to types required and according to same standards as pipe. Connecting bands shall be standard couplings made for corrugated-steel pipe to form soil-tight joints.
- 1004.15 Corrugated Plastic Pipe.** Pipe culverts and storm drains so designated shall conform to the requirements of Maine Department of Transportation Standard Specifications, Subsection 603 and 706.06 (special provisions). Corrugated Polyethylene pipe will meet the requirements of AASHTO M294 (ASTM F2648 may also be used with regard to pipe materials for all Polyethylene pipe) type S, Dual Wall. Corrugated Polyethylene pipe (and fittings) for Underdrain shall conform to AASHTO M252, slot perforated, for 6-inch diameter and to AASHTO M294 for 12-inch to 30-inch. Pipe to be used for Underdrain Type C shall be perforated in accordance with the applicable requirements of AASHTO M36/M36M Type III, Class I perforations. Pipe shall be corrugated with an integrally formed smooth waterway and be non-perforated or perforated as indicated on the drawings. Installation shall include all necessary boots, gaskets and adapters required to provide a soil-tight connection at all manholes, joints and fittings. Pipe shall have integral bell-and-spigot joint meeting the requirements of ASTM F 477 or approved equal.
- 1004.16 Cast Iron Catch Basin Frames and Covers** shall be cast of material conforming to the requirements of ASTM A48 Grade 30 and be of uniform quality, free from blowholes, porosity, hard spots, shrinkage distortion or other defects. They shall be smooth and well-cleaned by shotblasting or other approved method. They shall be of heavy duty construction weighing not less than 400 pounds and machined on both vertical and horizontal seating surfaces. Frames shall be 4-flange unless inlet curb inlet is specified, in which case they shall be 3-flange. Grates shall be non-rocking and be of appropriate entry configuration for the intended location.
- 1004.17 System Cleaning.** Upon completion of system construction, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.
- 1004.18 Alternative Catch Basins and Manholes.** Alternative materials for catch basins and manholes may be submitted for approval to the Administrator. Such submittals shall be reviewed on a case-by-case basis and may require an independent professional review to determine applicability and long term durability.

City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 11
Parking Standards

Amended August 20, 2012



ARTICLE 11 PARKING STANDARDS

1100 PURPOSE AND APPLICABILITY

- 1100.1 Purpose.** The purpose of this Article is to ensure a minimum level of off-street parking to avoid congestion on surrounding streets while avoiding excessive parking and driving up the cost of development. This article also regulates loading space, traffic circulation, and pedestrian access.
- 1100.2 Applicability.** This Article shall apply to new and existing development as follows:
- A. **Single and Two-Family Dwellings** are exempt from this Article with the exception of mobile homes in mobile home parks per **Article 8 Performance Standards 819.18**.
 - B. **Existing Developments** are exempt from this Article unless the development is physically expanded or changed resulting in more intensive parking needs per **Section 1105.1** or unless the existing parking supply is reduced per **section E** below.
 - C. **Development Expansion.** When a development, with a non-compliant number of parking spaces is expanded, additional parking spaces shall be provided only for the area of expansion in conformance with **Table 1105.1**, except as specifically noted in **Section 1102.1** for Downtown Parking.
 - D. **Change of Use Requiring More Parking Spaces.** When the use of a development is changed to another use that requires more parking spaces or, if the development is vacant, the use that existed immediately prior to such vacancy, parking spaces shall be provided for the proposed use in the amount necessary to conform to this Article, except as specifically noted in **Section 1102.1 for Downtown Parking**.
 - E. **Change of Use Requiring Fewer Parking Spaces.** When the use of a development is changed to another use that requires fewer parking spaces per **Section 1106**, the proposed change of use is a permissible change to a non-conforming parking situation provided that parking space requirements will be met to the greatest extent possible.
 - F. **Parking Lot Expansion.** If an off-street parking lot is being expanded, only the new portion of the parking lot must conform to this Article unless there are safety issues related to, queuing, egress/ingress, internal vehicular circulation, and loading. In such case, the Administrator may require that part of or the entire existing parking lot be brought into compliance with this Article.

1101 GENERAL PROVISIONS

1101.1 Prohibited Use of Parking. Parking that is required for a specific use shall not be dedicated to other uses, including commercial parking or be utilized for non-parking uses.

1101.2 Ingress and Egress. All access to parking lots and loading areas from an accessway shall be designed to ensure the smooth and safe circulation of vehicles to and from the accessway, per Article 9 - Street Design and Construction Standards section 901..

1101.3 Backing Out of Vehicles into Road. In general, parking and loading areas shall be provided in a manner that does not require the backing out of vehicles onto a road.

1101.4 Off-site Parking Lots.

A. **Satellite Parking.** If required parking cannot be entirely located on the same lot as the use which it serves, then parking may be located within reasonable walking distance of the entrance to the use as satellite parking. The acceptable walking distance between the satellite parking and the use it serves depends on the type of land use and the type of users. The Administrator shall determine whether the satellite parking is convenient, safe, and accessible at the location proposed, based on the quality of the pedestrian environment including, but not limited to, sidewalks, crosswalks, topography, lighting, line of site (longer distance are acceptable if people can see their destination), and pedestrian barriers found along the way such as, but not limited to, crossing busy traffic.

B. **Valet parking** or other comparable service shall be provided for satellite parking located beyond what the Administrator determines to be a reasonable walking distance.

1101.5 Parking Lot Location. In pedestrian-oriented areas, highly visible areas, and/or in the Commerce Park (CP) of the City of Ellsworth, developers shall strive to locate parking away from the front yard of the use it serves. These areas are: 1) Ellsworth Downtown Area, 2) along high traffic areas in the Urban Core such as, but not limited, to State-owned roads and the Beechland Road, 3) along State-owned roads within the Growth Area, and 4) the BTP.

1101.6 Lease Records. Parking not in the same ownership for the use which it serves shall be under a written use agreement. To avoid the possibility of owner “double leasing” spaces, lease records and agreements shall be provided to the City Planner or designee. To allow for coordination between leases, all leases shall have an opt-out provision on December 31 of each year.

1101.7 Structured Parking. All garages or other structured space allocated for the parking of vehicles may be considered part of the required parking.

1101.8 Layout and Design. Parking shall be arranged and marked to provide for orderly and safe loading/unloading and parking. For parking located within the Ellsworth Urban Core Area, individual parking spaces shall be clearly defined and directional arrows and traffic signs shall be provided as necessary for traffic control.

1101.9 Recreational Vehicle and Oversize Parking. The Administrator may require that some developments provide designated parking spaces for R.V. campers and other oversized passenger vehicles. These spaces cannot be substituted for regular or passenger car spaces.

1101.10 Handicapped Parking. All handicap parking spaces must be provided in accordance with the most current state and federal regulations.

1101.11 Snow Storage. The parking lot design shall provide an adequately sized location for snow storage.

1101.12 Parking Lot Setback. *RESERVED*

1102 DOWNTOWN PROVISIONS

The City of Ellsworth parking provisions for the Downtown Areas aim to support the vitality and appearance of the Ellsworth Downtown. They are prescribed according to three sub-areas known as Downtown A, B and C per the City of Ellsworth Downtown Parking Sectors Map. Development shall provide parking, to a minimum, per the requirements of the Downtown sub-area it is in, even if such parking is provided in a different area than the use it serves.

1102.1 Downtown A.

A. **Area.** Downtown A consists of a portion of Main Street and the abutting areas typified by parking constraints consistent with the distinctive historic construction patterns with structures built to, or very close to, property lines. This type of intense lot coverage makes the addition of on-site parking difficult and may have a negative impact on the historic character of the neighborhood.

B. Requirements.

- i. A change of use taking place within the confines of a building shall not require more parking than required for the use existing immediately prior to such change unless there is a cumulative addition of GFA such as, but not limited to, an entry way, shed, or the use of a rooftop and/or there are 10 or more employees added on the day shift.
- ii. The creation of additional GFA will require parking to be created at a flat rate of 3 parking spaces per 1,000 square feet of GFA, 1 space per dwelling unit, and 0.8 parking spaces for every additional employee over 9 new employees on the day shift.

- iii. A change of use without the creation of additional square footage but resulting in the creation of 10 or more jobs will require 0.8 parking spaces for every additional employee over 9 new employees on the day shift.

- C. **Parking Reduction** per **section 1105**, shall not apply for Downtown A.
- D. **Private Parking, Provided as Free Public Parking**, shall supply parking consistent with **Section 1102.1.B.i and Section 1102.1.B.ii** with the exception that the flat rate will be reduced to 2 parking spaces per 1,000 square feet of GFA.
- E. **Satellite Parking** serving Downtown A, shall be located within reasonable walking distance of the use it is serving, **per Section 1101.4.A** and be well signed per **Section F** below.
- F. **Signing of Free Public Parking**. Way-finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.
- G. **Loss of On-site Parking Spaces** in Downtown A, to a structure expansion for example, shall be re-created at a 1:1 ratio (cannot benefit from any of the above parking reduction provisions) and shall be within reasonable walking distance of Downtown A, per **Section 1101.4.A**.
- H. **Parking Earmarked for Dwelling Units** must be posted as reserved.
- I. **Leasing of Parking** existing at the time of the adoption of this Article is prohibited in Downtown A.
- J. **Commercial Parking Lots** are prohibited in Downtown A.

1102.2 Downtown B.

- A. **Area**. Downtown B encompasses the area located around Downtown A. For the most part this area is typified by sufficient onsite parking.
- B. **New Use or a Change of Use** shall be subject to the parking requirements in **Section 1105**.
- C. **Private Parking, Provided as Free Public Parking**, shall supply parking consistent with **Section 1105** with a 25% benefit reduction.
- D. **Satellite Parking** serving Downtown B, shall be located within reasonable walking distance of the use it is serving, per **Section 1101.4.A** and be well signed per **Section E** below.
- E. **Signing of Free Public Parking**. Way-finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.

- F. **Parking Earmarked for Dwelling Units** must be posted as reserved.
- G. **Leasing of Parking** existing at the time of the adoption of this Article is allowed.
- H. **Commercial Parking Lots** are allowed.
- I. **Existing Parking** (in existence at the time of the adoption of this Article) can benefit from the above parking reduction provisions.

1102.3 Downtown C.

- A. **Area.** Downtown C encompasses the area outside Downtown A and B and it is typified by having, in general, adequate parking.
- B. **New Use or a Change of Use** shall be subject to the parking requirements in **Section 1105.1.**
- C. **Private Parking, Provided as Free Public Parking,** shall supply parking consistent with **Section 1105** with a 20% benefit reduction.
- D. **Satellite Parking** serving Downtown C, shall be located within reasonable walking distance of the use it is serving, per **Section 1101.4.A** and be well signed per **Section E** below.
- E. **Signing of Free Public Parking.** Way-finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.
- F. **Parking Earmarked for Dwelling Units** must be posted as reserved.
- G. **Leasing of Parking** existing at the time of the adoption of this Article is allowed.
- H. **Commercial Parking Lots** are allowed.
- I. **Existing Parking** (in existence at the time of the adoption of this Article) can benefit from the above parking reduction provisions.

1103 ACCESS AND CIRCULATION

1103.1 Interconnection. Developers shall strive to interconnect adjacent commercial uses unless it is determined by the administrator that it is unsafe, that physical barriers exist, or that it will result in an adverse traffic impact. Developments that provide for shared access to commercial uses shall benefit from a 5% reduction in parking and developments that provide cross access between commercial uses shall benefit 5% reduction in parking. The total maximum combined reduction in parking shall not exceed 7%. The administrator shall determine that the reduction(s) will not result in insufficient parking.

1103.2 Access. Each parking lot shall be connected to a street or right-of-way via an accessway meeting **Article 9 - Street Design and Construction Standards.**

1103.3 Walkways. Safe pedestrian routes shall be provided in off-street parking lots.

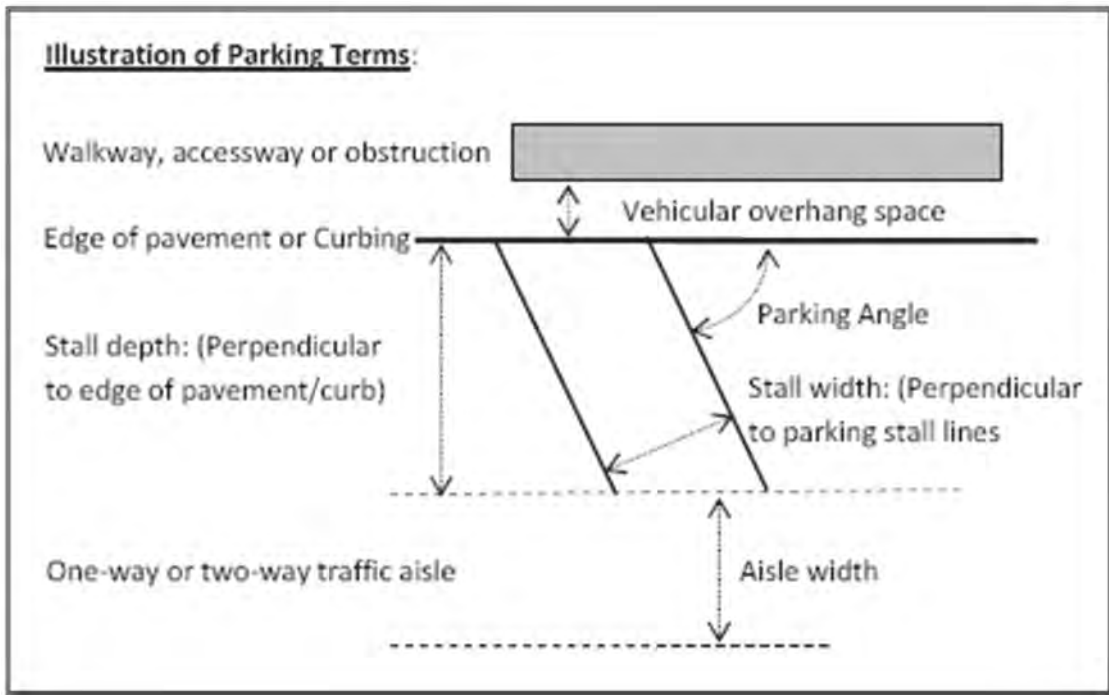
1103.4 Separation of Street from Parking Spaces. Accesses, walkways, sidewalks and other public rights-of-way shall be protected from vehicular overhang by wheel stops, curbs, or other method approved by the Administrator.

1104 PARKING SPACE DIMENSIONS

Parking shall be designed in conformance with the dimensions presented in adjacent Table 1104 Off-Parking Standards and the illustration below.

Table 1104 Off-street Parking Standards				
Parking Angle	Stall Width	Stall Depth*	One-Way Aisle Width	Two-Way Aisle Width
0° (parallel)	9.0'	23.0'	12.0'	20.0'
45°	10.0'	18.5'	16.0'	22.0'
60°	10.0'	18.5'	18.0'	22.0'
75°	10.0'	18.5'	18.0'	22.0'
90°	9.0'	18.5'	20.0'	24.0'

* If a parking lot is designed with a 6-inch curb, then the minimum stall depth may be reduced by 1.5 feet for angled parking and 2 feet for 90° parking, as long as it complies with 1104.4 Separation of Street from Parking Space above.



1105 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

1105.1 Minimum Amount. The minimum amount of required off-street parking spaces shall be determined in accordance with Table 1105.1 Parking Requirements.:

Table 1105.1 PARKING REQUIREMENTS	
LAND USE	NUMBER OF SPACES
RESIDENTIAL/LODGING	
<p>Hotel place of lodging that provide sleeping accommodations and supporting facilities such as restaurants, cocktails lounges, limited recreational facilities (pool and fitness room) and/or retail and service shops, and meeting and banquet rooms able to accommodate a maximum of 200 people.</p> <p>Hotel with meeting space and banquet rooms able to accommodate more than 200 people.</p>	<p>1.31 spaces/room, plus 0.2 employee spaces/ sleeping room</p> <p>1.31 spaces/room, plus 0.2 employee spaces/ sleeping room, plus 15 spaces/1,000 SF GFA for all meeting space /banquet/convention space.</p>
<p>Business Hotel – place of lodging aimed toward the business traveler. These hotels provide sleeping accommodations and other limited facilities, such as a breakfast buffet bar and afternoon beverage bar (no lunch or dinner is server and no meeting facilities are provided). Each unit is a large single room. Business hotels provide very few or none of the supporting facilities provided at hotels; and Motel – place of lodging that provide accommodations and often a restaurant. Motels generally offer free on-site parking and provide little or no meeting space and few (if any supporting facilities. Exterior corridors accessing rooms – immediately adjacent to a parking lot – commonly characterize motels.</p>	<p>1 space/room, plus 0.2 employee spaces/ sleeping room</p>
Bed & Breakfast and Inn	1 space/room, plus 2 spaces
Campsite	1 space/site
Condominiums	2 spaces/dwelling unit
Multi-Family – 3 or more units	1.5 spaces/dwelling
Mobile Home	2 spaces/dwelling unit
Boarding House	1 space/room, plus 2 spaces
Senior Housing , Congregate Facility, Nursing Home, and Assisted Living Facility	1.2 spaces/unit
Homeless Shelter	1.5 spaces /1,000 SF GFA plus 2 spaces for staff

Table 1105.1 continued - INSTITUTIONAL, SOCIAL & PUBLIC SERVICES/FACILITIES

Day Care	0.25 spaces/student
Elementary and Middle School	0.25 spaces/student
High School	0.85 space/employee, and 0.4 space per student
Assembly, Theaters, Auditoriums	0.33 spaces/seat
Convention Center, Ballrooms, Banquet Center	0.33 spaces/seat, plus 1 space per employee
Hospital: Any institution where medical or surgical care and overnight accommodations are provided to non-ambulatory and ambulatory patients, as part of a campus setting. The term hospital includes medical clinics (facilities that provide diagnoses and outpatient care).	2 spaces/1,000SF GFA plus 1 space/employee including visiting staff doctors
COMMERCIAL/INDUSTRIAL USES	
Industrial, manufacturing, warehousing, wholesale	0.83 spaces/employee on maximum shift, plus 1 space per vehicle customarily used in operation of the use or stored on the premises.
Medical/Dental Clinic	2.2 spaces/exam room plus 1 space/employee
Automobile repair and gasoline stations	1 space/350 SF or 6 spaces minimum
Barber, beauty, nail and tanning shops	1.75 spaces/chair plus 1 space/employee
Animal Hospital	3 spaces/1,000 sq. ft. GFA
Retail Store and Service Businesses	3.6 spaces/1,000 sq. ft. GFA
Motor Vehicles, ATV, and Boat Sales	2 spaces/employee
Furniture and Carpet Stores	2.5 spaces/ 1,000 sq. ft. GFA
Video Rental Store	2.5 spaces/1,000 sq. ft. GFA or 5 spaces minimum, whatever is greater
Professional Office	3 spaces/1,000 sq. ft. GFA
Convention Center	0.33 spaces/seat plus 0.8 space/employee
Bank	5 spaces/1,000 sq. ft. GFA
Restaurants, eating/drinking establishments	0.25 spaces/seat, plus 1 space per employee
Fast Food restaurant	0.5 space/seat, plus 0.68 spaces/employee

1105.2 Uses Not Cited. If a development does not have a prescribed parking requirement, as listed in **Table 1105.1** Parking Requirements above, and it is determined by the Administrator that the development cannot be fairly compared to a use in the above

table, then the parking requirement for the development shall be determined, by the Administrator with guidance from the City Planner or designee. The applicant shall provide adequate information by which the proposal can be reviewed, which includes but may not necessarily be limited to the following: 1) types of uses; 2) number of employees; 3) building design capacity; 4) square feet of sales area; 5) parking spaces proposed on site; 6) parking spaces provided elsewhere; and 7) hours of operation.

1105.3 Unit of Measurement. The following measurement units shall be used when determining the required number of parking space.

- A. **Gross Floor Area** of buildings (GFA), as defined.
- B. **Bench Seating:** In calculating bench seating for places of assembly, each 24 inches of benches, pew or other such seating, shall be counted as one seat.
- C. **Stacking spaces:** Each required drive-through waiting or stacking spaces shall be a minimum of 24 feet long and 9 feet wide.
- D. **Fractional Spaces.** When calculations for determining the required number of parking spaced results in a fractional space, any fraction of less than one-half may be disregarded, while a fraction of one-half or more shall be counted as one space.
- E. **Employee Parking.** Parking spaces required for employees shall be based on the maximum number of employees on the premises at any one time. The overlap in shift change is not taken into account.

1105.4 Adjustment and Reduction.

- A. **Parking Deferment.** Where the Administrator finds that the required amount of parking is excessive or there is uncertainty of how much space the use might require, the Administrator may approve a reduction in parking spaces of up to 25%, provided that the land area needed to meet the full requirement is retained. The site plan shall note the area where parking is being deferred with a dotted lot layout. If within a two-year period following issuance of a Certificate of Occupancy the Administrator determines, based on observed usage that the deferred parking is needed, then such parking shall be constructed by the applicant within 12 months of being informed of such request in writing by the Administrator. The Administrator may require the posting of a performance bond or other assurance to cover the estimated construction cost of the deferred parking with a refund or a release in two years if the additional parking is not found to be necessary.
- B. **Limits on Excessive Parking.** In order to minimize excessive areas of pavement which depreciate aesthetic standards and contribute to high rates of stormwater runoff, exceeding the minimum parking space requirement by up to 25% shall only be allowed with approval by the Administrator. In granting the additional parking spaces, the Administrator shall determine that such parking is required, based on documented evidence, to accommodate the use on a typical day not a peak period demand.
- C. **Overflow Parking.** Any request to exceed the minimum parking space requirements from 25.1% to 38% shall be considered overflow parking and shall

comply with the process established in **Section B** above and shall be constructed in a manner that returns surface water to the ground (pervious surfacing).

- D. **Shared Parking Reduction.** The Administrator may consider a reduction in the number of parking required for a mixed-use building or when two or more uses share parking because of dissimilar peak time parking demands, as calculated using 1105.4 Shared Parking Reduction Schedule. Parking reduction shall not apply to uses in Downtown A or for mixed-uses that are expressly listed in 1105.1 Parking Requirement Table.

A reduction in the number of parking spaces is computed by multiplying the minimum amount of parking normally required for each land use by the appropriate percentage as shown **in section 1105.4** Shared Parking Reduction Schedule for each of the five time periods shown. The number of parking spaces required is determined by totaling the resulting numbers in each column; the column total that generates the highest number of parking spaces then becomes the parking requirement.

Table 1105.4 Shared Parking Reduction Schedule

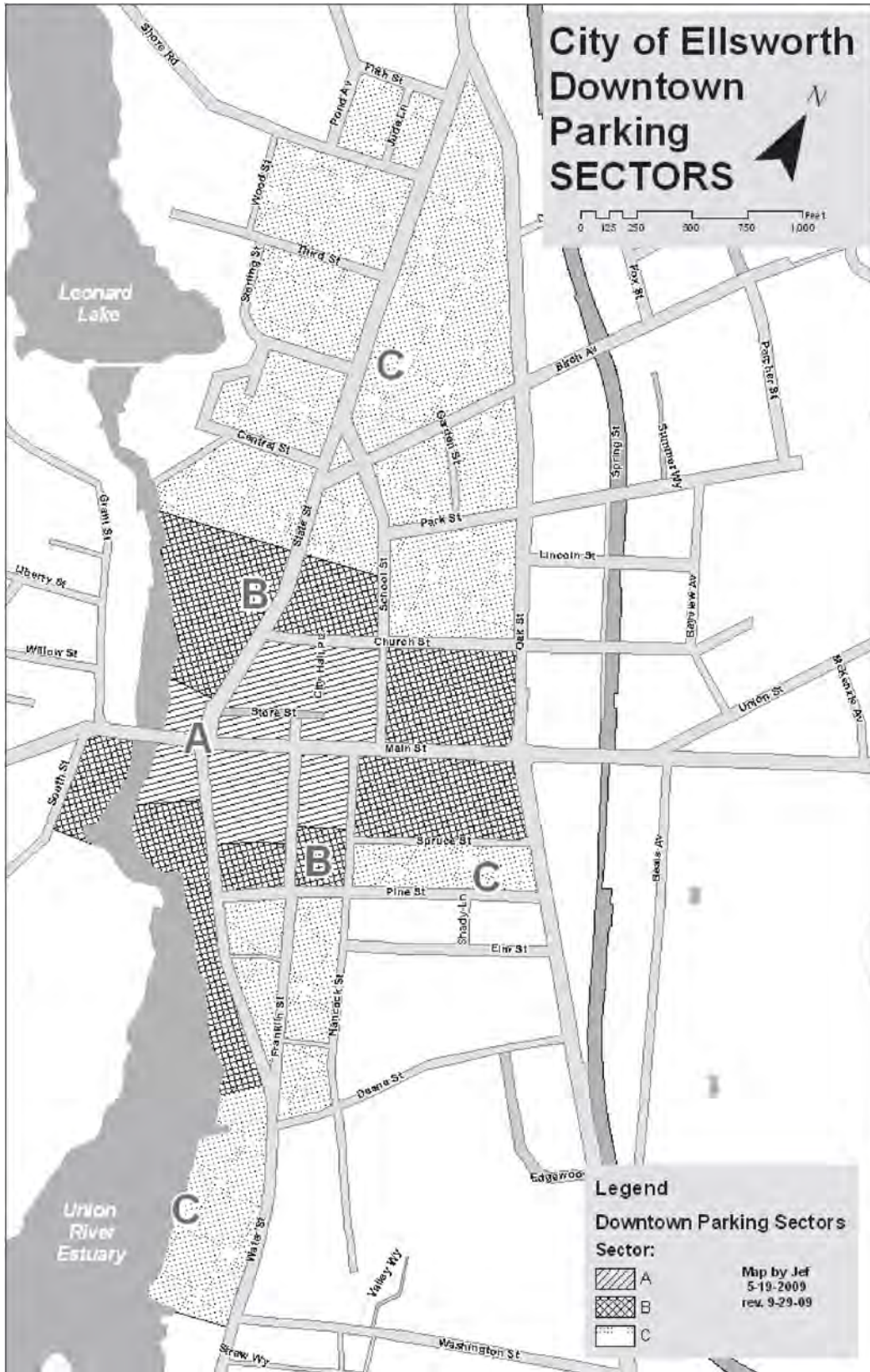
Type of Use	Total Required Spaces w/out Reduction	Parking Reduction				
		Weekday		Weekend		
		Daytime (6 am-6 pm)	Evening (6 pm-midnight)	Daytime (6 am-6 pm)	Evening (6 am-midnight)	Nighttime (Midnight-6 am)
Office/Professional Services		100%	10%	10%	5%	5%
Industrial		100%	10%	10%	5%	5%
Food Sales and Service/Restaurant		50%	100%	100%	100%	10%
Retail		60%	90%	100%	70%	5%
Hotel, Motel, Inn		75%	100%	75%	100%	75%
Indoor/Legitimate Theater, Comm. Rec. establishment		40%	100%	80%	100%	10%
Meeting Center		50%	100%	100%	100%	10%
Multi-family dwellings		50%	100%	100%	100%	100%
Places of Worship		10%	10%	100%	5%	5%
Other		100%	100%	100%	100%	100%
TOTAL						

Example –Two buildings are sharing one parking lot. Building #1 consists of a 2,020 SF of professional office space; 11,000 SF of retail; and a 62-seat restaurant with 6 staff. Building #2 consists of a 280-seat auditorium and a 300-seat church. This project would require 235 parking spaces.

Table 1105.4.A Shared Parking Reduction Schedule - example						
Type of Use	Total Required Spaces w/o Reduction	Parking Reduction				
		Weekday		Weekend		
		Daytime (6 am-6 pm)	Evening (6 pm-midnight)	Daytime (6 am-6 pm)	Evening (6 am-midnight)	Nighttime (Midnight-6 am)
Office/Professional Services	6	100%	10%	10%	5%	5%
		6	0.6	0.6	0.5	0.5
Industrial	0	100%	10%	10%	5%	5%
		0	0	0	0	0
Food Sales and Service/Restaurant	22	50%	100%	100%	100%	10%
		11	22	22	22	2.2
Retail	40	60%	90%	100%	70%	5%
		24	36	40	28	2
Hotel, Motel, Inn	0	75%	100%	75%	100%	75%
		0	0	0	0	0
Indoor/Legit Theater, Com Rec.	92	40%	100%	80%	100%	10%
		36.8	92	73.6	92	9.2
Meeting Center	0	50%	100%	100%	100%	10%
		0	0	0	0	0
Multi-family dwellings	0	50%	100%	100%	100%	100%
		0	0	0	0	0
Places of Worship	99	10%	10%	100%	5%	5%
		9.9	9.9	99	4.95	4.95
Other	0	100%	100%	100%	100%	100%
		0	0	0	0	0
TOTAL	259	87.7	161	235.2	147	19

1106 LOADING SPACE

Loading facilities shall be located entirely on the same lot as the development it serves with the exception of the Downtown Area where there are, in the judgment of the Administrator, practical difficulties in satisfying the requirement for loading. Loading facilities or truck staging area shall not be allowed in the front yard or side yard. In cases where such facilities must be placed in the front yard or side yard, the use of a decorative concrete block screen wall, planting or mature plants and other such landscaping elements shall be required for screening.

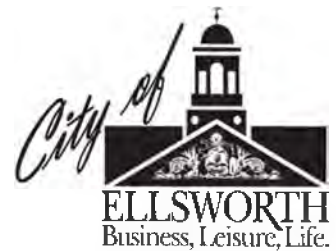


City of Ellsworth
Chapter 56
Unified Development Ordinance

Article 12
Sign Standards

Note: When the Unified Development Ordinance was adopted on June 18, 2012 Article 12 was reserved as place holder – left blank. On March 17, 2014 Chapter 9 Sign Ordinance of the Ellsworth Code of Ordinances was repealed and replaced with this Chapter.

Amended March 17, 2014
Amended April 21, 2014



ARTICLE 12 SIGN STANDARD

1201 PURPOSE AND APPLICABILITY

1201.1 Purpose. The purpose of this Article is to promote and protect the public health, safety, and welfare by regulating existing and proposed advertising signs of all types; to reduce sign obstruction that may contribute to traffic accidents; to reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way; to improve pedestrian and traffic safety; and to enable the fair and consistent enforcement of this Article.

1201.2 Applicability. A sign may be erected, placed, established, painted, created, or maintained only in conformance with this Article.

1202 GENERAL PROVISIONS

1202.1 Sign Permit. Except as otherwise herein provided, no person shall erect, modify or move any signs visible from a public access way without first applying for and obtaining a sign permit from the Code Enforcement Officer.

1202.2 General Safety. No sign, whether new or existing, shall be permitted that causes a sight distance, traffic, health or welfare hazard or results in a nuisance due to illumination, placement, display, or manner of construction.

1203 APPEAL AND EXCEPTION.

1203.1 APPEAL. Unusual site conditions may warrant signs not allowed by this Article. Exception may be granted by the Board of Appeals per Article 1 Purpose and Authority, Section 114 Appeals, 114.3 Sign Standards.

1204 FEE. The fee for a sign permit is \$10.00.

1205 NON-CONFORMING SIGNS.

1205.1 Non-conforming Signs. Non-conforming signs damaged by any cause shall be removed or made to conform to this Article unless the replacement or repair cost is equal to or less than 50% of the replacement value at the time of the damage.

1206 EXEMPT SIGNS.

The following signs may be installed without a sign permit, provided they meet the requirements listed below. These signs shall not be included in the determination of type, number, or area of signs allowed on a given property.

1206.1 Address Signs. Signs installed in compliance with Article 8 Performance Standards Section 815 Street Naming and Property Numbering and with Chapter 4 Fire Prevention Codes and Ordinances.

1206.2 Government Signs. Official federal, state or local government signs.

1206.3 No Trespassing Signs. Trespassing warnings posted in compliance with the requirements of federal, state, and local laws.

1206.4 Traffic Safety Signs. Small incidental signs placed in parking lot and other private traffic directional signs limited to guidance of pedestrian or vehicular traffic within the premises on which they are located. Generally these signs do not exceed 3 feet in height and 5 square feet in area.

1206.5 Vehicle Signs. Painted signs or decals affixed to the body of any vehicle, unless parked for the primary purpose of displaying the sign.

1206.6 Memorial/Interpretative Markers. Memorial, interpretative signs or historical signs or tablets displayed by a public or educational non-profit agency strictly for the purpose of informing or educating the public.

1207 TEMPORARY SIGNS.

Temporary signs as listed below do not require a permit. Temporary signs shall not be placed in a position that will obstruct or impair vision to traffic or in any manner create a hazard or disturbance to the health, safety, and welfare of the general public.

1207.1 Construction Signs. Construction signs not to exceed 32 square feet in aggregate may be erected on the premise on which construction, alteration, or repair is taking place, during the period of active continuous construction. Sign display is limited to the names and logos of the architects, engineers, landscape architects, contractors, lending institutions, or similar individuals or firms having a role or interest with respect to the project. Construction signs must be removed within ten business days of the completion of construction.

1207.2 Real Estate Signs. A real estate sign advertises the lease or sale of land, space, or structure. Real estate signs may be single- or double-faced and are limited to a maximum of two 6 square feet signs for residential structures and a maximum aggregate of 32 square feet for commercial properties. Real estate signs should preferably be located on the property for sale/lease. All off-premise real estate signs shall be located

within a public right-of-way. Real estate signs must be removed within ten business days of the date of sale or lease of the property.

1207.3 Political Signs. A political sign of 32 square feet maximum bearing political messages relating to an election, primary or referendum may be erected within the public right-of-way no sooner than six weeks prior to an election and must be removed no later than one week following the date of the election.

1207.4 Special Events. Signs and banners for special events such as but not limited to sales, promotions, holidays, auctions, and grand openings shall comply with the following regulations.

A. **Duration.** The signage may not be placed more than 30 days prior to the initial date of the special event, and must be removed within 10 days after the special event.

B. **Attention Getting Devices.** Attention-getting devices such as but not limited to balloons, flags, pennants, streamers, and people carrying or wearing signs are allowed in conjunction with a special event. Any attention-getting device may not be placed within the right-of-way and shall not create a traffic hazard.

1207.5 Civic Event. A sign other than a special event sign, posted to advertise a civic event or initiative sponsored by a not for profit or public agency, school, church, or other similar noncommercial organization.

1207.6 Farm Products. A sign erected by a producer of agricultural products that are grown, produced, and sold on the producer's premise. The sign must be directional in nature and may advertise only the agricultural product that is available for immediate purchase. The sign shall be removed once the agricultural product advertised on the sign is no longer available. A sign may not exceed 8 square feet in size and must be located within 5 miles of where the product is sold. Landowner permission must be obtained. A producer may not erect more than 4 signs.

1208 SIGN MAINTENANCE AND UNSAFE, ABANDONED, AND OBSOLETE SIGNS.

1208.1 Maintenance. All signs must be maintained. The signs must be kept clean, neatly painted and free from all hazards such as, but not limited to, faulty wiring and loose fastening, and must be maintained at all times in such condition so as not to be detrimental to the public health or safety or detrimental to the physical appearance or the character of the neighborhood, or constitute a distraction or obstruction that may contribute to traffic accidents. Normal wear and tear of aged signs including the copy of changeable display signs and banners shall be repaired when they detract from the visible quality of the sign.

1208.2 Unsafe Sign. Any sign that, in the opinion of the Code Enforcement Officer, is unsafe or not adequately secured, including but not limited to a sign where the display areas or panels are visibly cracked or broken, where the support structure or frame members are visibly corroded, bent broken, torn, or dented shall be deemed an unsafe sign. Such sign conditions shall be corrected or removed, together with any supporting structure, by the owner of the property on which the sign is located, within 90 days of written notice by the Code Enforcement Officer. If an unsafe sign poses an immediate threat, the Code Enforcement Officer can require immediate correction.

1208.3 Obsolete Sign. The frame and supporting structure of a sign that no longer advertises or identifies a bona fide business conducted on the property or product sold may remain in place except that all advertisement, displays, copy shall be removed within 60 days. Such signs shall be maintained not to create an eyesore. For example, an obsolete wall sign should be removed, and the wall area that was covered by the sign should be repaired and painted.

1208.4 Abandoned Sign. A sign or sign structure on a site where all buildings have been demolished or removed for more than 60 days shall be removed by the owner of the property on which it is located or within 60-day written notice by the Code Enforcement Officer.

1209 MAINE DOT OFFICIAL BUSINESS DIRECTION SIGNS. There is one area where off-premise Official Business Direction Signs are prohibited:

1209.1 Main Street Area: Includes Main Street from the Union River to High Street and the first 50 feet of any street intersecting the aforementioned segment of Main Street.

1210 GENERAL SIGN STANDARDS.

1210.1 Setbacks.

A. Sign locations shall not interfere with sight distance or pedestrian and cyclist safety.

- B. Signs shall be setback at least 5 feet from any property line and a setback greater than 5 feet may be required by the administrator to avoid interference with the line of sight of vehicles and pedestrian circulation.
- C. In the Downtown Zone, where buildings are built on the lot lines or thereabout, the administrator may disregard the minimum 5 feet sign setback provided that the sign location does not interfere with visibility required for safe vehicular and pedestrian circulation, especially at street corners.

1210.2 ON- AND OFF-PREMISE SIGNS.

- A. **Distance.** All signs (on- and off-premise) shall be located within 1,500 feet of the principal building or facility where the business is carried on or practiced or within 1,500 feet of the point of interest. Storage areas, warehouses and other auxiliary structures and fixtures shall not be deemed to be buildings where the business, facility or point of interest is carried on or practiced.
- B. **Formal Easement and Owner Permission.** The placement of any off-premise signs requires a formal easement with the exception of portable signs, which only require written owner permission.
- C. **Home Occupation and Subdivision Signs.** Home occupation and subdivision signs are not allowed off-premise.

1210.3 Home Occupation. One sign identifying the name, address, and profession of a home-occupation is allowed provided such sign does not exceed 12 square feet in area and 6 feet in height.

1210.4 Lighting Standards.

- A. Lighting for sign shall not create a hazardous glare for pedestrian or vehicles either in a public street or on any private premises.
- B. The light source shall be shielded from view.
- C. Signs using exposed neon or other gas tube illumination bent to form letters, symbols, or other shapes do not need to be shielded.
- D. Externally illuminated signs shall utilize focused light fixtures that do not allow light or glare to shine above the horizontal plane of the top of the sign or onto any public right-of-way or adjoining property.
- E. Signs shall be designed so that illumination does not exceed 10 foot-candles measured at a distance of 10 feet from the base of the sign. This standard may need to be lowered to avoid light trespass.

1210.5 Clearance. Awning, marquee, projecting, suspended wall signs and other overhead signs shall conform to the following requirements.

- A. **Vertical Clearance.** The minimum clearance between the lowest point of a sign and the grade immediately below shall be 8 feet for all or any portions within a public right-of-way and walkway areas.
- B. **Horizontal Clearance.** The minimum horizontal clearance between a sign and the curb line shall be 2 feet.

1210.6 Attachment and Anchor. Sign attached to masonry, concrete or steel shall be safely and securely fastened by means of metal anchors, bolts or expansion and lag screws of sufficient size and anchorage to safely support the loads applied. Nails shall not be used to secure any projecting sign to any building or structure.

1211 DETERMINATION OF SIGN AREA, DIMENSIONS AND HEIGHT.

1211.1 Determination of Sign Area and Dimensions. In general, the sign area is calculated by determining the number of square feet within which a sign face can be enclosed. The total sign area is the sum of all individual sign areas.

- A. **Framed Wall Sign.** For a wall sign which is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area and dimension shall include the entire portion within such background or frame.
- B. **Un-framed Wall Sign.** For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, etc.), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not part of the architecture of the building. When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements. Minor appendages to a particular shape shall not be included in the total area of a sign.
- C. **Freestanding Sign.** For a freestanding sign, the sign area shall include the frame, if any, but shall not include.
 - i. A pole or other structural support unless such pole or other structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.
 - ii. Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscape, building, or structural forms complement the site in general.
- D. **Sign Faces.** When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and are part of the same sign structure, the sign area shall be computed as the measurement of one of the two faces. When the sign has more than two display surfaces, the area of the sign shall be the area of largest display surfaces that are visible from a single direction.

One important consideration in determining if a "feature" - landscaping or architectural - should be excluded from the sign is whether the feature or element, without lettering or logo, would otherwise be constructed - as part of the building or site development if the answer is "yes," then the areas of the feature should be excluded from being part of the sign.

1211.2 Determining Sign Height. The height of the sign shall be measured from the ground, adjacent to the sign, to the top of the sign and support structures.

- A. **Freestanding Sign Height.** The height of a freestanding sign shall be measured from the base of the sign or supporting structure at its point of attachment to the ground, to the highest point of the sign. A freestanding sign on a man-made base, including a graded earth mount, shall be measured from the grade of the nearest






pavement or top of any pavement curb. The word pavement also refers to other pervious surfaces such as but not limited to compacted gravel. If the grade of the site where the sign is located is significantly lower than the public accessway, the Code Enforcement Officer may allow additional sign height (above the lower grade) to assure that the sign has visibility equal to the other signs along the accessway.

- B. **Projecting Sign Clearance.** Clearance from projecting signs shall be measured as the smallest vertical distance between the finished grade and the lowest point of the sign, including any framework or other embellishments.

1212.3 SPECIFIC STANDARDS BY ZONING DISTRICTS

Zoning District	Maximum Aggregate Area of Signs	Wall Sign	Projecting Sign	Freestanding Sign			Portable Sign	Changeable Display Sign	Window Sign	Home Occupation Sign	Subdivision Sign
				For development of less than 100,000 SF GFA	For development of 100,000 SF GFA or more	For Park Zones					
DT	NA	<ul style="list-style-type: none"> -The maximum sign area is 1.5 SF per LF of building or tenant frontage with an additional 32 SF for each additional floor. -The sign width cannot be greater than 80% of the length of the tenant space or the length of the building frontage for single tenant building. -The sign area may be increased by 25% when the building is set back at least 200 feet from the public accessway and may be further increase by an additional 25% for each additional 200 feet of setback or fraction thereof, up to a maximum increase of 100%. -The sign cannot exceed the height of the ridge of the roof except for flat roof where it can extend no more than 6 feet above the eave of the roof. 	<ul style="list-style-type: none"> -One sign per public entrance. -The maximum sign area is 12 SF per public entrance. -The minimum sign clearance is 8 ft above the public right-of-way or private walkway areas. 	<ul style="list-style-type: none"> -The maximum sign area is 64 SF per street frontage. -The maximum sign area may be split into more than one sign. -The maximum sign height is 12 FT. 	<ul style="list-style-type: none"> -The maximum sign area is 64 SF per Street frontage. -The maximum sign area may be split into more than one sign. -The maximum sign height is 12 FT. 	NO	<ul style="list-style-type: none"> -The maximum aggregate sign area is 32 SF. -The maximum sign area may be split into more than one sign. -The max sign size is 8 SF. -The maximum sign height is 4FT. -Signs may not be illuminated. -Signs must be weighted down. 	<ul style="list-style-type: none"> -Changeable display sign may be utilized on any permitted sign. -The changeable display shall not change more than once every 5 minutes. -When the display changes, it must change as rapidly as is technologically practicable with no phasing, rolling, scrolling, flashing, or phasing. -Required to have automatic dimming capability that adjusts to the brightness to the ambient light at all times of the day and night. 	<ul style="list-style-type: none"> -Window signs shall not exceed 50% of the total area of all windows per facade. 	<ul style="list-style-type: none"> -The maximum sign area is 12 SF. -The maximum sign height is 6 FT. -A maximum of one sign per home. 	<ul style="list-style-type: none"> -The sign must be maintained by the developer or the homeowners association. -The maximum sign area is 32 SF. -The maximum sign height is 8 FT. -One residential subdivision sign is allowed at each major street frontage of a subdivision.
U	NA	<ul style="list-style-type: none"> -The maximum sign area is 2.0 SF per LF of building or tenant frontage with an additional 32 SF for each additional floor. -The sign width cannot be greater than 80% of the length of the tenant space or the length of the building frontage for single tenant building. -The sign area of any wall sign may be increased by 25% when the building is set back at least 200 feet from the public accessway and may be further increase by an additional 25% for each additional 200 feet of setback or fraction thereof, up to a maximum increase of 100%. -The sign cannot exceed the height of the ridge of the roof except for flat roof where it can extend no more than 6 feet above the eave of the roof. 	↓	<ul style="list-style-type: none"> -The maximum sign area is 64 SF per Street frontage. -The maximum sign area may be split into more than one sign. -The maximum sign height is 16 FT. 	<ul style="list-style-type: none"> -The maximum sign area for the development is 200 SF per street frontage with a primary entrance and the maximum sign height is 25 FT. -If the development has several buildings an additional 32 SF of sign area is allowed for each individual building with a maximum height of 10 feet. -The maximum sign area may be split into more than one sign. 	NO	↓	↓	↓	↓	↓
C	NA	<ul style="list-style-type: none"> -The maximum sign area is 2.5 SF per LF of building or tenant frontage with an additional 32 SF for each additional floor. -The sign width cannot be greater than 80% of the length of the tenant space or the length of the building frontage for single tenant building. -The sign area of any wall sign may be increased by 25% when the building is set back at least 200 feet from the public accessway and may be further increase by an additional 25% for each addition 200 feet of setback or fraction thereof, up to a maximum increase of 100%. -The sign cannot exceed the height of the ridge of the roof except for flat roof where it can extend no more than 6 feet above the eave of the roof. 	↓	<ul style="list-style-type: none"> -The maximum sign area is 96 SF per Street frontage. -The maximum sign area may be split into more than one sign. -The maximum sign height is 25 FT. 	<ul style="list-style-type: none"> -The maximum sign area is 300 SF per street frontage where there is a primary entrance and the maximum sign height is 25 FT. -If the development has several buildings an additional 32 SF of sign area is allowed for each individual building with a maximum height of 10 feet. -The maximum sign area may be split into more than one sign. 	NO	↓	↓	↓	↓	↓

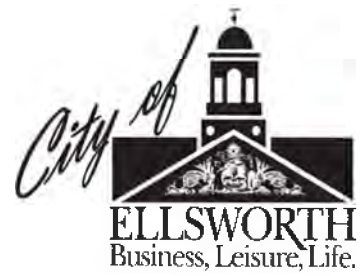
1212.3 SPECIFIC STANDARDS BY ZONING DISTRICTS continued

Zoning District	Maximum Aggregate Area of Signs	Wall Sign	Projecting Sign	Freestanding Sign			Portable Sign	Changeable Display Sign	Window Sign	Home Occupation Sign	Subdivision Sign
				For development of less than 100,000 SF GFA	For development of 100,000 SF GFA or more	For Park Zones					
N	32 SF	YES	-One sign per public entrance. -The maximum sign area is 12 SF per public entrance. -The minimum sign clearance is 8 ft above the public right-of-way or private walkway areas. 	-The maximum sign height is 8 FT.	NO	NO	-Changeable display sign may be utilized on any permitted sign. -The changeable display shall not change more than once every 5 minutes. When the display changes, it must change as rapidly as is technologically practicable with no phasing, rolling, scrolling, flashing, or phasing. -Required to have automatic dimming capability that adjusts to the brightness to the ambient light at all times of the day and night. 	-Window signs shall not exceed 50% of the total area of all windows per facade. 	-The maximum sign area is 12 SF. The maximum sign height is 6 FT. -A maximum of one sign per home. 	-The sign must be maintained by the developer or the homeowners association. -The maximum sign area is 32 SF. -The maximum sign height is 8 FT. -One residential subdivision sign is allowed at each major street frontage of a subdivision. 	
I	96 SF	YES		-The maximum sign height is 12 FT.	NO	NO					
BP	96 SF in addition to signs allowed per the Freestanding Park Zone standard.	YES		-The maximum sign area is 64 SF. -The maximum sign height is 12 FT.	NO	-One per park zones. -Requires formal easement if off-premise unless on city-owned land. -The maximum sign area is 300 SF. -The maximum sign height is 25FT.					NO
R	64 SF	YES		The maximum sign height is 12 FT.	NO	NA					YES
DW	64SF	YES		The maximum sign height is 12 FT.	NO	NA					YES
CP	48 SF in addition to signs allowed per the Freestanding Park Zone standard.	YES	The maximum sign height is 10 FT.	NO	-One per park zones. -Requires formal easement if off-premise unless on city-owned land. -The maximum sign area is 300 SF. -The maximum sign height is 25FT.	NO					

SF: square footage; GFA: gross floor area; LF linear footage; FT; feet; and NA: not applicable.

City of Ellsworth
Chapter 56
Unified Development ordinance

Article 13
Board of Appeals



ARTICLE 13 BOARD OF APPEALS

1300 ESTABLISHMENT AND ORGANIZATION

There shall be a Zoning Board of Appeals (Board) as provided by Title 30-A M.R.S.A. Sections 2691 and 4353. The Board shall consist of 5 members and one associate member.

The members shall be appointed by the City Council. The members shall be appointed for terms of 5 years each, such terms to be staggered so that the term of one member shall expire each year.

The associate member shall act in place of any member who may be unable to act due to conflict of interest, absence, physical incapacity, or any other reason. The City Council may dismiss a member of the Board for cause before that member's term expires.

1301 JURISDICTION

The Board shall have the following powers:

- A. Administrative Review.** To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or the Planning Board in the administration of this ordinance.
- B. Variance.** To authorize in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. In the Shoreland Zone, variance shall be applied per Chapter 56, Article 4. Shoreland Zoning Regulations section 404 Shoreland Zoning Appeals. In all other zones, a variance shall apply only to area, yard space, height, or setback requirements, and in no case shall a variance apply to the use of land or structures. A variance may be granted only if the Board finds that all of the following criteria are met:
 - i. That the land in question cannot yield a reasonable return unless a variance is granted;
 - ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
 - iii. That the granting of a variance will not alter the essential character of the neighborhood; and
 - iv. That the hardship is not the result of action taken by the applicant or a prior owner.

1302 POWER AND DUTIES

The Zoning Board of Appeals shall have the following powers:

- A.** To interpret provisions of the ordinance which are called into question in any matter before it;
- B.** To approve the issuance of a variance subject to conditions, where those conditions are directly related to the present or future use or division of the property;
- C.** To take and hear testimony, to swear witnesses and compel the presence of witnesses by process; and
- D.** To establish such procedures for hearings before it, as are not inconsistent with the procedures set forth in this ordinance and state law.

1303 GENERAL PROCEDURES

- A.** The Chairman shall be elected annually by the Zoning Board of Appeals from its membership. The Chairman shall call meetings as required, or when requested to do so by a majority of the members of the Board, by the City Council or by the Code Enforcement Officer. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
- B.** The secretary shall be elected annually by the Board from its membership. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the City clerk's office and may be inspected at reasonable times.
- C.** A quorum of the Board is necessary to conduct an official Board meeting; a quorum must consist of at least a majority of the Board's members.
- D.** The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

- E. The transcript of the testimony, if any, and exhibits, together with all papers and requests filed at the proceeding, constitutes the record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial of relief. Notice of any decision shall be mailed or hand-delivered to the petitioner, the Code Enforcement Officer or the Planning Board, as appropriate, and the City Council within seven days of the Board's decision.

1304 PROCEDURE FOR ADMINISTRATIVE REVIEW

The following procedures shall apply to appeals for Administrative Review conducted before the Zoning Board of Appeals:

- A. An appeal may be taken to the Board by an aggrieved person from any decision of the Code Enforcement Officer or the Planning Board, as appropriate within 30 days of the date of the decision appealed from. The Board may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within 30 days of the decision.
- B. An appeal shall be made by filing a written notice of appeal with the Board, which includes:
 - i. A sketch drawn to scale showing lot lines, the locations of existing buildings, and other physical features pertinent to the relief requested.
 - ii. A concise statement of the relief requested and why it should be granted.
- C. Upon being notified of an appeal, the Code Enforcement Officer or the Planning Board, as appropriate, shall transmit all papers comprising the record of the decision appealed from to the Board.
- D. The Board shall hold a public hearing on the appeal within 30 days of its receipt of an appeal request. At least 7 days prior to the date of hearing on such appeal, the Board shall cause to be published in one issue of a newspaper of general circulation in the City, notice which includes:
 - i. The name of the person(s) appealing;
 - ii. The location and description of the property involved;
 - iii. A brief description of the decision from which an appeal is taken; and
 - iv. The time and place of the hearing.
- E. The Board shall, in addition to the notice set forth in subsection D above, give written notice by regular mail or its equivalent to:
 - i. All abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the City Tax Assessor);
 - ii. The person(s) making the appeal; and

- iii The Planning Board or the Code Enforcement Officer, as appropriate.

1305 VARIANCE PROCEDURES

The following procedures shall apply to applications for a variance:

- A.** An application for a variance may be made by any person with a possessory, contractual, or other legal or equitable interest in the property.
- B.** An application for a variance shall be made by filing with the Zoning Board of Appeals a written application for a variance, which shall include:
 - i. An original or copy of the deed, agreement, option or other instrument showing the applicant's interest in the property;
 - ii. A sketch drawn to scale showing lot lines, the locations of existing and proposed buildings, and other physical features such as septic system locations, well, etc.; and
 - iii. A concise statement of the nature of the variance sought.
- C.** The Board shall hold a public hearing on the variance request within 30 days of its receipt of the request. At least seven days prior to the date of the hearing on the variance, the Board shall cause to be published in one issue of the newspaper of general circulation in the City, notice which includes:
 - i. The name of the person(s) seeking the variance;
 - ii. The location and description of the property involved;
 - iii. A brief description of the nature of the variance sought; and
 - iv. The time and place of the hearing.
- D.** The Board shall, in addition to the notice set forth in subsection C above, give written notice by regular mail, or its equivalent to:
 - i. All abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the City Tax Assessor);
 - ii. The person(s) seeking the variance; and
 - iii. The City Planner and the Code Enforcement Officer.
- E.** Whenever the Board grants a variance under this ordinance, a certificate indicating the name of the current property owner; identifying the property by reference to the last recorded deed in its chain of title; indicating the fact that a variance, including any conditions of variance, has been granted; and the date of granting shall be prepared in recordable form and provided to the applicant for recording in the Hancock County Registry of Deeds. Variances not recorded within 30 days of the date of being provided to the applicant shall be invalid. No rights may accrue to the variance recipient or his heirs, successors or assigns unless and until the recording is made within 30 days.

1306 PROCEDURES FOR PUBLIC HEARINGS

The following procedures shall be used in the conduct of public hearings conducted pursuant to this Article:

- A. The Zoning Board of Appeals shall establish procedures to maintain orderly procedure and to allow each side to be heard. All questions and answers shall be directed through the chairman, and all persons at the hearing shall abide by the order of the chairman.
- B. Any party may be represented by an agent or attorney. The participation of that agent or attorney shall be governed by the procedures established by the Board.
- C. Hearings shall not be continued except upon a showing of good cause.

1307 DECISIONS OF THE BOARD

- A. A concurring vote of at least three members present and voting shall be necessary for the Zoning Board of Appeals to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or the Planning Board, or to grant a variance.
- B. The applicant for the appeal or variance shall bear the burden of proof on all issues.
- C. Administrative relief may be granted only where the Board finds that the decision of the Code Enforcement Officer or the Planning Board from which appeal is made was clearly contrary to the specific provisions of this ordinance.
- D. A variance may be granted only where the Board finds that the applicant has proven each requirement by a preponderance of the evidence.
- E. The Board shall decide all appeals or variance requests within 30 days after the close of the public hearing.
- F. The Board may reconsider any decision reached under this section within 30 days of its prior decision. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 30 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

1308 APPEALS TO THE SUPERIOR COURT

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

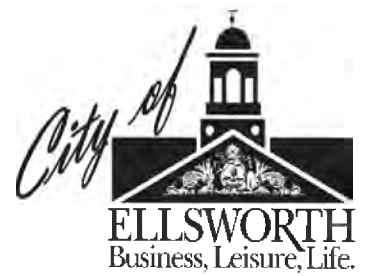
1309 STAYS OF PROCEEDINGS

An appeal to the Zoning Board of Appeals stays all legal proceedings in furtherance of the action from which appeal is taken unless the Code Enforcement Officer or the Planning Board from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with that Code Enforcement Officer or Planning Board, as appropriate, that by reason of the facts stated in the certificate that a stay would cause immediate peril to life and property. If the Board concurs with the opinion set forth in the certificate, the proceedings shall not be stayed otherwise than by a court of record on application, on notice to the Code Enforcement Officer or Planning Board, as appropriate, from whom the appeal is taken. In the event such a certificate is filed with the Board, the Board shall conduct a hearing on the property of a stay. The hearing shall be conducted in accordance with the procedures set forth in 1303 General Procedures and Appeals Procedures sections of this article.

City of Ellsworth
Chapter 56
Unified Development ordinance

Article 14
Definitions

Amended August 20, 2012
Amended January 14, 2013
Amended March 17, 2014
Amended May 21, 2018



ARTICLE 14 DEFINITIONS

AASHTO: American Association of State Highway and Transportation Officials.

Accessory Use or Structure: A subordinate use or structure customarily incidental and subordinate to the principal use and located on the same lot. Accessory uses, in the aggregate, shall not subordinate the principal use(s) on a lot. An accessory use located in an accessory structure shall conform to the space standards of each zone.

Accessory, Dwelling: A separate residential dwelling unit, but not a mobile home, which is located within a single-family dwelling unit or in a detached building and is clearly subordinate to the primary use.

Accessway: Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a residential driveway less than 500 feet in length.

Adverse Impact: A negative consequence for the physical, social, or economic environment resulting from an action or project.

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

Agricultural Activity and Processing, Commercial: Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except commercial logging and timber harvesting operations); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards; tree farms; nurseries and green houses. It also includes activities involving a variety of operations on crops or livestock, and on crops after harvest to prepare them for harvest or further processing and packaging at a distance from the agricultural area. These uses include but are not limited to slaughterhouse, mills, refineries, canneries, milk processing plants, cleaning, milling, pulping, drying, roasting, storing, packing, selling and other similar activities.

Agricultural, Activity: Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber

products (except timber harvesting); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards.

Agricultural, Feedlot: A lot, structure, building, or confined area used intensively for the keeping of farm animals, including but not limited to, of bovine, equine, swine, or sheep species in close quarter for the purpose of fattening for market or slaughter and where animal waste may accumulate. Does not include a barn or similar structure.

Alteration: A change, addition, or modification requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

Animal Hospital: A commercial establishment for the care and treatment, and boarding of animals, including household pets.

Apartment, Accessory: A separate dwelling unit, which is located within, and subordinate to a single family detached dwelling.

Application: The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the applicable department or board of the City from development review, approval, or permitting process.

Arterial Road: Roads or streets which are expected to provide a high degree of mobility for the longer trip length. They are to provide a relatively high operating speed and level of service. Access to abutting property is not the major function and thus some degree of access control is desirable to enhance mobility.

ASTM: International standards organization formerly known as the American Society for Testing and Materials.

Automobile rental/leasing: Leasing or renting of automobiles, motorcycles, and light load vehicles.

Automobile Repair: The use of a site for the repair of vehicles such as automobiles, trucks, vans, trailers, recreational vehicles, or motorcycles or other similar motorized transportation vehicles including the sale, installation, and servicing of equipment and parts. This use includes muffler shops, repair garages, oil change and lubrication, painting, tire sales and installations, wheel and brake shops, body and fender shops and similar repair and maintenance activities but excludes dismantling or salvage.

Automobile Sales, Major: Any business establishment that sells or leases, and maintains an inventory of more than 26 new or used vehicles for sale or long-term lease such as new or used

automobiles, trucks, vans, trailers, recreational vehicles, or motorcycles or other similar motorized transportation vehicles.

Automobile Sales, Minor: Any business establishment that sells or leases, and maintains an inventory of 5 to 25 new or used vehicles for sale or long term lease such as automobiles, trucks, vans, trailers, recreational vehicles, or motorcycles or other similar motorized transportation vehicles.

Average Daily Traffic (ADT): Average Daily Traffic. See Trip Generation.

Bar and/or Cocktail Lounge: Any premises wherein alcoholic beverages are sold at retail for consumption on the premises and minors are excluded therefore by law. It shall not mean a premise wherein such beverages are sold in conjunction with the sale of food for consumption on the premises and the sale of such beverages comprises less than 25% of the gross receipts.

Basal Area: The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement: Any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Bed and Breakfast: Any dwelling in which lodging is offered for compensation to persons either individually or as a family with or without meals.

Best Management Practices (B.M.P.): Established guidelines for control and reducing point and non-point source pollution.

Bikeways: A continuous unobstructed, reasonably direct route between two points that is intended and suitable for bicycle use. Bikeways include, but are not limited, to bike paths, and multi-use paths.

Boarding House, Congregate Housing, Assisted Living: Any dwelling in which three or more rooms are offered for compensation to persons either individually or as families with or without meals for more than three consecutive days.

Boat Launching Facility♦: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Buffer, Vegetated: A strip of land with natural or planted vegetation located between a structure and a side a rear property line intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.

Building Height, Non-residential: The vertical distance measured from the average elevation of the finished grade within 20 feet of a building to the eaves or start of a roofline. The highest point of the roof is not included in the height limitations.

Building Height, Residential: The vertical distance measured from the average elevation of the finished grade within 20 feet of a building to the highest point of the building. The highest point shall not include attachments or structures such as transmission towers, windmills, chimney, antennas, and similar structures having no floor area.

Building: Any structure having a roof or partial roof supported by columns or walls and which is used for the shelter or enclosure of persons, animals, goods or property of any kind.

Bulk Materials: Uncontained solid matter such as powder, grain, stone, sand, etc.

Bulk Tank Facilities: Bulk storage tanks of flammable and combustible liquids, compressed gases or liquefied petroleum gas (LP gas) for businesses use, wholesale, or wholesale distributing.

Bureau: State of Maine Department of Conservation's Bureau of Forestry.

Business and Trade School: A specialized instructional establishment that provides on-site training of business, commercial, and /or trade skills such as accounting, driving, and auto repair. This classification excludes establishments providing training in an activity that is not otherwise permitted in the zone where it is to locate. Incidental instructional services in conjunction with another primary use shall not be considered a business and trade school.

Campground: A business, public or private establishment operated as a recreational site for tents, camper, trailer, and travel trailer or other forms of temporary living shelter that can accommodate two or more parties.

Campsite: Private land for exclusive personal use, not associated with a business or a campground, which is developed for repeated camping and which involves site improvements that may include, but not limited to gravel pads, parking areas, fireplaces, or tent platform.

Canopy Trees: A deciduous tree whose mature height and branch structure provide foliage primarily in the upper half of the tree.

Canopy: The more or less continuous cover formed by tree crowns in a wooded area.

Cardholder, Qualified Employee (medical marijuana): Cardholder means a principal officer, board member or employee of a dispensary who has been issued and possesses a valid registry identification card.

Cemetery: A burial ground for the interment of the dead, includes crematoriums, and mausoleums.

Change in Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use. Example: Residential to Business, Business to Assembly.

Changeable Display Sign. A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means, or manually through placement of letters or symbols on a panel mounted in or on a track system.

Cluster Subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space owned in common by lot/unit owners, the City, or a land conservation organization.

Code Enforcement Officer: A person appointed by the City Council to administer and enforce this ordinance. Reference to the Code Enforcement Officer may include the Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.

Collector Road: These roads serve a dual function in accommodating short trips and feeding Arterial roads. They should provide some degree of mobility and also serve abutting property. An intermediate design speed and level of service is appropriate.

Commercial Use: The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Commercial: A land use which is primarily occupied or engaged in commerce or work intended for commerce other than a home occupation.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations for a Final Plan, or by a vote by the Board to waive the submission of required information. The Board may issue a receipt to the applicant upon its determination that an application is complete.

Comprehensive Plan or Policy Statement: Any part or element of the overall plan or policy for development of the municipality as defined in Title 30-A M.R.S.A. Section 4301.

Connector: An accessway whose primary function is to allow traffic access between adjacent lots or developments without providing access to a public right-of-way.

Conservation Plan: A customized document that outlines the use and best management practices of the natural resources on public or private lands. Typically, the plan will include land use maps, soil information, inventory of resources, engineering notes, and other supporting information.

Contiguous Lots: Lots which adjoin at any line or point, or are separated at any point by a body of water less than 15 feet wide.

Cross Access: An easement or accessway providing for vehicular access between two or more sites.

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

Curb Cut: The providing of vehicular ingress or egress between property and abutting street.

Curb Ramp: A short ramp cutting through a curb or built up to it.

Custom Manufacturing: Establishments primarily engaged in the onsite production of goods by hand manufacturing, within enclosed structures, involving the use of hand tools, or the use of mechanical equipment commonly associated with residential or commercial uses, or a single kiln.

Day Care: Any facility operated for the purpose of providing care, protection and guidance to individuals during only part of a 24-hour day. This term includes nursery schools, pre-schools, day care centers for individuals, and other similar uses but excludes educational facilities or any facility offering care to individuals for a full 24-hour period.

DBH: The diameter of a standing tree measured 4.5 feet from ground level

Deck: A level structure adjacent to a building elevated above the surface of the ground which has a railing but no roof, awning, or other covering.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking lots, and streets.

Development: Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building

on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Dimensional Requirements: Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

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

Dispensary: A Registered Dispensary or Dispensary means a not-for-profit entity registered pursuant to 10-144 CMR Chapter 122 Section 6 consisting of a Medical Marijuana Cultivation Facility, a Medical Marijuana Retail Facility, or a Medical Marijuana Combined Facility (Medical Marijuana Cultivation Facility and a Medical Marijuana Retail Facility as defined: 1)

Medical Marijuana Cultivation Facility (Cultivation Facility): A not-for-profit facility limited to the acquisition and possession of medical marijuana; cultivation or growing of medical marijuana; manufacturing of medical marijuana; delivering, transporting and transferring of medical marijuana to a Medical Marijuana Retail facility; and 2) **Medical Marijuana Retail Facility (Retail Facility):** A not-for-profit facility limited to acquisition and possession of medical marijuana; the selling, supplying or dispensing of medical marijuana and of paraphernalia or related supplies and educational materials to registered patients who have designed the Medical Marijuana Retail Facility to dispense medical marijuana for their medical use and to registered primary caregivers of those patients.

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

Disturbed Area: All land areas that are stripped, graded, grubbed, filled or excavated at any time during the site preparation or removing vegetation for, or construction of, a project.

Downtown Area: Geographic area delineated by the City Council on November 17, 2008.

Drainageway: A natural or man-made channel or course within which surface discharge of water may occur. Drainageways include, but are not limited to rivers, streams and brooks

(whether intermittent or perennial), swales ditches, pipes, culverts, and wetlands with localized discharge of water.

Driveway, Commercial: Any accessway serving a commercial use generating less than 50 average daily traffic (ADT).

Driveway, Residential: A means of access from a public or private road which will serve no more than two dwelling units. .

Dwelling Unit: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing, and sanitary facilities; includes single-family houses, and the units in a duplex, apartment house, multi-family dwellings, and residential condominiums. Dwelling units created after June 19, 1989, must contain a minimum of 500 square feet of living space.

Dwelling, Multi-Family: A building designed or intended to be used, or used exclusively for residential occupancy by three or more families living independently of one another including apartment buildings and condominiums, but excluding single-family and two-family dwellings. Ellsworth has two types of multi-family dwelling: a) the 3- to 6-unit complex; and b) the 7-unit and more.

Dwelling, Single - Family Detached: A building designed or intended to be used exclusively for residential occupancy by one family only and containing only one dwelling unit.

Dwelling, Single Family Attached: A building designed or intended to be used exclusively for residential occupancy by no more than two families and containing two separate dwelling units in one structure.

Dwelling: Any building or structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, inn, or similar use.

Earth: Topsoil, sand, gravel, clay, peat, rock, or other minerals.

Educational Institution: Parochial, private, charitable or nonprofit schools, junior college, or university other than business and trade schools, with or without living quarters, dining rooms, restaurants, and other incidental facilities for students, teachers, and employees.

Emergency Mobile Home Park: A parcel of land used to accommodate several mobile homes for a temporary period.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and

operations to rescue human beings, property and livestock from the threat of destruction or injury.

Enclosure Ratio: The ratio of building height to the distance between building and the center of the right-of-way. The front setback distance shall be measured from the front façade, including any porch, stoop, or other area integral; to the building.

Engineer: Professional Engineer licensed to practice in the State of Maine.

Entrance: An accessway serving one of the following uses: retail, office, industrial, institutional, or service business uses. (Am. 6/09/03)

Equipment Sales and Rental: Establishments primarily engaged in the sale or rental of large tools, trucks, tractors, construction equipment, agricultural implements, and similar industrial equipment. Included in this type of use is the incidental storage, maintenance, and servicing of such equipment.

Essential Services, Distribution: Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other buildings normally, but not always, found in a street right-of-way to serve adjacent properties.

Essential services, Facilities: A building or other structure used or intended to be used by public or private utilities, including but not limited to gas tank and other storage facilities; water or sewer storage facilities; compost facility; and electrical transmission and distributions substations.

Essential Services, Transmission: Large-scale facilities serving the entire city or region such as power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors, solid waste disposal or processing facilities, excluding landfill, sewage or wastewater treatment plants, and generating facilities.

Expansion of a Structure: An increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of Use: The addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Façade: That portion of any exterior elevation on the building extending from grade to top pt the parapet, wall, or eaves and the entire width of the building elevation.

Family: One or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage or adoption, but not to consist of more than five unrelated persons.

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

Financial Security: Any security used as a guarantee that improvements required as part of an application are satisfactorily completed.

Floodway: the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor Area♦: the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Floor Area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Foot-candle: A measure of light falling on a surface. One foot-candle is equal to the amount of light generated by one candle shining on one square foot surface located one foot away. Foot-candle measurements shall be made with a photometric light meter three feet above the ground.

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

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

Formal Easement. An interest in real property recorded at the Hancock County Registry of Deeds dedicating a portion of land to be used specifically for a sign.

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

Freestanding. A sign that is attached to, erected on, or supported by some structure such as a pole, mast, frame, or other structure that is not itself an integral part of or attached to a building or other structure whose principal function is something other than the support of a sign.

Frontage, Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Frontage, Street: The horizontal distance measured in a straight line between the intersections of the side lot lines of a lot with the right-of-way of a street.

Functional Area (of an intersection): The area beyond the physical intersection of two accessways that comprises decision and maneuvering distance, plus any required vehicle storage length, and the area protected through corner clearance standards and access spacing standards.

Functionally Water-dependent Uses: those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to dams, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings; finfish and shellfish processing; fish storage and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boat building facilities; marinas; navigation aids; basins and channels; retaining walls; industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters.

Gas Station: A place where gasoline, motor oil, lubricants or other minor accessories are retailed directly to the public on the premises in combination with the retailing of items typically found in a convenience store.

Glare: Light exceeding an accustomed level resulting in annoyance, discomfort, or reduced visibility.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Article, Ellsworth's Great Ponds are: Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Gross Floor Area (GFA): the total interior floor area of a building or structure measured at the inside face of the exterior walls, but excluding stairwells, elevator shafts, lobbies, and bathrooms located for common or public usage of the total building rather than for tenant or internal usage,

and space occupied by mechanical equipment or space related to the operation and maintenance of the building.

Ground Cover: Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Growth Area: Area of land defined in the Comprehensive Plan as the Growth Area.

Half Story: That portion of a building immediately beneath a sloping roof when there is less than four feet vertically between the floor and the intersections of the bottoms of the rafters at the plate with the interior faces of the walls. A half story may be as completely used for any purpose as a full story.

Harvest Area: The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated accessways and land management roads construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Height of a Structure: The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

High and Moderate Value Waterfowl and Wading Bird Habitat: High and moderate value waterfowl and wading bird habitats are significant wildlife habitats. Waterfowl are members of the family Anatidae including but not limited to brant, wild ducks, geese, and swans. Wading birds include but are not limited to herons, glossy ibis, bitterns, rails, coots, common moorhens, and sandhill cranes. High and moderate value waterfowl and wading bird habitats are depicted on a GIS data layer maintained by the Maine Department of Inland Fisheries and Wildlife (IF&W) and available from either IF&W or the Maine Department of Environmental Protection. The IF&W rating procedure and list of waterfowl and wading bird species was created December 22, 1993, updated September 1, 2005, and is available at IF&W offices.

High Intensity Soil Survey: A map prepared by a certified Soil Scientist, identifying the soil types down to 1/8 of an acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

High Pollutant Land Uses: Land uses with high pollutant loads including, but not limited to, the following categories and uses: 1) Manufacture involving: Asphalt, petroleum or lubricants; chemical products or hazardous substances; food products; glass, clay, cement, concrete or gypsum products; paper or paper products; rubber or plastic; leather, textiles or fabric; and timber or wood products. 2) Transportation uses: air, land & water transportation facilities; vehicles service, fueling and maintenance facilities; vehicle equipment and cleaning facilities; vehicle fleet storage areas; road salt storage and loading areas (if exposed to rainfall); and parking lots generating 400 ADT or greater. 3) Industrial/other commercial uses: auto salvage or recycling; electricity generation; hazardous waste treatment, storage or disposal; landfill, land application or dump operation; landscape nurseries; outdoor storage and loading areas; oil and gas refining; printing and publishing; recycling facility; sewage treatment works; and warehousing. 4) Mining/extraction of: coal, oil or gas; metals; and minerals.

Home Occupation: Any occupations, profession, or business activity customarily conducted entirely within a dwelling unit and carried on by a member of the family residing on the dwelling unit and carried on by a member of the family residing in the dwelling unit, and which occupation or profession is clearly incidental and subordinate to the use of the dwelling unit for dwelling purposes and does not change the character of the dwelling unit. A home occupation is an accessory use to a dwelling unit.

Homeless Shelter: A building or group of buildings, which offer overnight and/or longer-term transitional lodging, consisting of separate units and/or dormitory style, multiple bed units. Meals may be provided to occupants. All of the services may be given without charge and in no case shall such a shelter be run on a for-profit basis.

Hotel/Motel: A business establishment having guest rooms consisting of a building or series of building in which lodging is offered for compensation and where related ancillary uses shall be allowed only if the use is expressly permitted in the subject zone.

Impervious surface/area: Low-permeability man-made material that prevents stormwater from penetrating the ground, such as structures and areas covered with asphalt, concrete and compacted gravel used for parking and roadways. A natural or man-made waterbody is not considered an impervious area except for the purpose of stormwater calculations. (proposed in the draft stormwater)

Increase in Nonconformity of a Structure, Shoreland: Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in shoreline setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the shoreline setback requirement if the expansion extends no further into the required shoreline setback area than does any portion of the existing

nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Industrial Service: Establishment providing industrial services to individuals or businesses. This classification include dry cleaning plants, metal machine and welding shops; furniture upholstery shop; and similar business engagements in custom fabrication and repair.

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

Industry, Heavy: A use involving the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or use involving storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

Industry, Light: A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

Infill Development: Development on vacant or underused lots in otherwise built-up areas.

Institutional: A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or City-owned or -operated building, structure or land used for public purposes.

Junk Yard: 1) a place occupied by three or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two vehicles or bodies, also referred to as a motor junk yard but excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.; or 2) a yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps and sanitary landfills.

Laboratory, Research and Development Facility: An establishment which conducts research, development, production of scientific commodities for sale, or the breeding and managing of animals for the purpose of distribution to other research facilities. It also includes laboratories conducting educational or medical research or testing such as, but not limited to, a biotechnology or biomedical establishments. Excluded from this definition are activities incorporating high

concentration of chemicals, biological and radiological hazards that are usually associated with general manufacturing uses.

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

Landing Area: A landing pad area, strip, deck, or building roof used to launch or receive non-emergency aircraft.

Landscaping: Any combination of living plants, such as trees, shrubs, vines, ground cover, flowers or grass, as well as fences, retaining wall, benches, and other similar structures.

Level of Service (LOS): is a measure of effectiveness for transportation infrastructure elements such as intersections that considers mobility, timing and other factors.

Licensed Forester: A forester licensed under 32 M.R.S.A. Chapter 76.

Light Fixture, Outdoor: An outdoor illuminating device, outdoor lighting, or reflective surface, lamp or similar device, permanently installed or portable, used for illumination, decoration, or advertisement.

Light Trespass: Any light spill falling over property lines that illuminate adjacent ground or buildings.

Lighting Maintenance: The servicing, repairing, or altering of any premises, appliance, apparatus, or equipment to perpetuate the use or purpose for which such premises, appliance, apparatus, or equipment was originally intended. Activities that change the character, size, or scope of a project beyond the original design are not included in this definition.

Lighting, Fully Shielded: A light fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture are projected below the horizontal plane.

Loading, off-street: An unobstructed area provided for the temporary parking of trucks and other motor vehicles for the purpose of loading, and unloading goods, wares, materials, and merchandise.

Local Road: Roads or streets with relatively short trip lengths and which have as a primary function property access. They are intended to provide access to residences, businesses, farms and other abutting property and are not intended to provide through traffic, although a limited amount of through traffic may use some local roads. These roads are not designed for mobility or

higher operating speeds. This function is reflected by use of lower design speeds and level of service.

Lot Area, Shoreland: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot Coverage, Shoreland: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Lot Lines: The property lines bounding a lot as defined below: 1) Front Lot Line is, on an interior lot, the line separating the lot from the street or right-of-way. On a corner or through lot, the line separating the lot from each street or right-of-way. On lots with shore frontage, the shoreline constitutes the front lot line. 2) Rear Lot Line is the lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension. 3) Side Lot Line is 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 Hancock County Register of Deeds.

Lot Size, Minimum Area: The lot area, less the area of any land subject to right-of-way or easements, other than utility easements servicing the lot, and also excluding lands which are below the normal high water mark or defined wetlands.

Lot Width: The width of a lot at the front setback line.

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

Lot, Interior: Any lot other than a corner lot.

Lot, Minimum Width, Shoreland: The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot, Occupied: A parcel with a primary structure erected and ready for occupancy.

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by ordinances and having frontage upon a public street, right-of-way, or private way.

Low Impact Design: Low Impact Development (LID) is a stormwater management strategy designed to maintain site hydrology and mitigate the adverse impacts of stormwater runoff and nonpoint source pollution. LID actively manages stormwater runoff by mimicking a project site's pre-development hydrology using design techniques that infiltrate, store, and evaporate runoff close to its source of origin. LID strategies provide decentralized hydrologic source control for stormwater runoff. In short, LID seeks to manage the rain, beginning at the point where it falls.

Lumen: A quantitative unit measuring the amount of light emitted from a light source.

Maintenance: The servicing, repairing, or altering of any sites, appliances, apparatus or equipment to perpetuate the use or purpose for which such sites, appliances, apparatus, or equipment was originally intended. Activities resulting in a substantial change are not considered maintenance – see redevelopment definition.

Manufacturing: Uses include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing.

Marijuana: Marijuana means the leave, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, and other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Marina: A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Market Value: The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

MDEP: Maine Department of Environmental Protection

MDOT: Maine Department of Transportation

Medical Use (medical marijuana): Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patients debilitating

Mineral Exploration: Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral Extraction: Any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site (for commercial purposes).

Mobile Home Pad: That portion of a mobile home site reserved for the placement of a mobile home, appurtenant structures or additions.

Mobile Home Park: A parcel of land with accommodations for three or more mobile homes in use as dwellings.

Mobile Home Site [aka mobile home park lot]: An area of land in a Mobile Home Park used for installation of a mobile home and the exclusive use of its occupants that shall be designated on the Mobile Home Park plan meeting all of the requirements of this Article 8 Performance Standards section 819 Mobile Home Park Standards.

Mobile Home: A structure, transportable in one or more sections, which is built on a permanent chassis, and suitable for year round single family occupancy, with or without permanent foundation.

Modular Home: Dwelling units that are designed to be placed on a permanent perimeter foundation which extends below the frost line. These units come into multiple sections.

Multi-unit Residential: A residential structure containing three or more residential dwelling units.

Municipal Officers: Municipal Officers shall mean the Ellsworth City Council.

Native: Indigenous to the local forests.

Net Residential Acreage: The total acreage available for the project, as shown on the proposed plan, minus the area for streets or accessways and the areas, which are unsuitable for development.

Noise: the intensity, duration and character of sounds from any and all sources.

Noise-Sensitive Use: Where people normally sleep such as homes, hospitals, and hotels; and within classroom and contemplative settings such as schools, libraries, churches and funeral homes.

Non-conforming Condition, Shoreland: Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Article 4 Shoreland Zoning or subsequent amendment took effect.

Non-conforming Lot, Shoreland: A single lot of record which, at the effective date of adoption or amendment of this Article 4 Shoreland Zoning, does not meet the area, frontage, or width requirements of the district in which it is located.

Nonconforming Lot: A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the zoning district because of a change in the applicable zoning district regulations or a government action.

Non-conforming Structure, Shoreland: A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Article or subsequent amendments took effect.

Nonconforming Structure: A structure that was lawfully erected but that no longer complies with all the regulations applicable to the zoning district in which the structure is located.

Non-conforming Use, Shoreland: Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Article or subsequent amendments took effect.

Nonconforming Uses: A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located.

Normal High-water Line (non-tidal waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Obstruction: Any building, structure, sign, apparatus, mechanical equipment, parked spaces, fence, landscaping or other element of a long term nature placed above or on the ground with a visibility triangle.

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees, or other vegetation and which is not occupied by buildings, structures, or other impervious surfaces.

Parapet: That portion of a wall, which extends above the roof line.

Parking Lot, Private: Parking for the exclusive use of the owners, tenant, lessees, or occupants of the lot on which the parking area is located or their customers, employees or whomever else they permit to use the parking area.

Parking Lot, Public: Parking available to the public, with or without payment or fee.

Parking Lot: An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

Parking, Commercial: Parking or storage of motor vehicles as a commercial enterprise for which any fee is charged independently of any other use of the premise.

Parking, Excess: Required parking which has been demonstrated as being unused by an existing land use or exceeds the minimum ordinance requirements.

Parking, Satellite: Parking not located on a parcel or lot that is contiguous or adjacent to the parcel or a lot not containing the use for which the parking is intended.

Parking, Shared: A public or private parking area used jointly by two or more users.

Parking, Valet: Parking of vehicles by an attendant provided by the establishment for which the parking is provided.

Patio: A level area adjacent to a dwelling unit constructed of stone, cement or other material located at ground level, with no railing or other structure above the level of the ground.

Peak Flow: The greatest rate of flow in a drainageway, measured as volume per unit of time, resulting from a storm of specified frequency and duration.

Peak Period: Period of maximum parking activity: can be by the hour, day of week, or season.

Permeability: The capacity of a material to transmit a liquid, which is expressed in terms of hydraulic conductivity of water in centimeters-per-second units of measurement.

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

Personal Service Establishment: Businesses primarily engaged in providing services involving the care of an individual and his/her goods or apparel which does not in itself produce tangible commodity.

Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-water Line or Within a Wetland: 1) Temporary: Structures which remain in or over the water for less than 7 months in any period of 12 consecutive months; 2) Permanent: Structures which remain in or over the water for 7 months or more in any period of 12 consecutive months.

Planned Unit Development: A development controlled by a single developer for a mix of residential, commercial, and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems, and the retention of the natural characteristics of the land.

Planning Board: The Planning Board of the City of Ellsworth created by the Ellsworth City Charter in accordance with State Statutes.

Point of Interest: An outdoor area or other places of scenic, historical, cultural or religious interest, whether publicly or privately owned.

Portable Sign. A sign such as but not limited to, a sign on wheels, interchangeable message board, A- or T-frame sign, menu board, or sandwich board.

Principal Structure: A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal Use: A use other than one which is wholly incidental or accessory to another use on the same premises.

Privy: A pit in the ground into which human excrement is placed.

Processing, Fish Wholesale: The loading, unloading, packing, processing, and packaging of edible fish and other seafood products but not including re-processing of fish wastes or fish by-products.

Professional and Business Offices: The place of business, other than a residential unit, of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance agents, psychiatrists, psychologists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations and, with the exception of the Business and Technology Park Zone, it also includes providers of personal services such as barbers, hairdressers, and beauticians.

Professional Establishment: Any establishment home occupation, whose primary activity is the provision of assistance, as opposed to products, to individuals, businesses, industry, government and other enterprises such as lawyers, accountants, financial advisors, architects, surveyors, real

estate and insurance agents, psychiatrists, psychologists, counselors, doctors and therapists, and the like, includes Health Care Facilities.

Project Data Sheet: A summary sheet of no more than two pages showing Land Use Information (site area, total dwelling units, gross density, parking), Land Use Plan (buildings, streets/parking, detention ponds, open space in acres, and percent of total land), Unit Information (type, square footage, sales price) Economic Information (site acquisition, site improvement, construction costs).

Projecting Sign. A sign attached to and projecting from a building or structure face or wall, generally at right angles to the building.

Public Drinking Water: A public water system delivers water through a set of pipes for human consumption and has at least 15 service connections, or regularly serves at least 25 residents for 60 or more days per year.

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

Public Way: A street that allows vehicular and/or pedestrian use by the general population.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvia, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

Reconstruction, Street: The rebuilding of a street in such a manner and to such an extent as to substantially replace the existing street or a portion of the existing street, including but not limited to widening, extending, straightening, and layout of an existing street.

Recording Plan: A copy of the Final Plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line locations and sizes, culverts, and building lines.

Recreational Facility: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational, Trailer and Vehicle: A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, including, without limitation, a pickup camper, travel trailer, tent trailer, motor home, or converted van or truck.

Redevelopment: The servicing, repairing, or altering of any structures, buildings, sites,

appliances, apparatus or equipment resulting in a substantial change irrespective of whether a change occurs in the land use.

Registered Patient (medical marijuana): Registered patient means a patient who has a registry identification card issued by the State of Maine.

Religious Institutions: Place of worship of religious assembly with related facilities such as the following in any combination: rectory or convent, meeting hall, offices for administration of the institution, and playground.

Repair, Street: Repair of a street or section thereof to maintain its serviceability including, but not limited to patching, brush cutting, ditching, grading, erosion control measures and storm water management, etc. It does not include construction, relocation and alterations.

Replacement System [subsurface wastewater disposal]: A system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing overboard wastewater discharge.

Residential Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Residential: A use intended primarily for human living accommodations.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Residual Stand: A stand of trees remaining in the forest following timber harvesting and related activities

Restaurant: An establishment where food and drink are prepared and served to the public.

Re-subdivision: The division of an existing subdivision or any change in the plan for an approved subdivision which effects the lot lines, including land transactions by the subdivide not indicated on the approved plan.

Retail Business: A business establishment engaged in the sale of goods or services to an ultimate consumer for direct use or consumption, and not for resale, not including automobile oriented businesses and not including electronic, mechanical, or video game arcades.

Riprap: Rocks, irregularly shaped, and at least 6 inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

River: A free-flowing body of water including its associated floodplain wetlands. For the purposes of this Ordinance Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road (street): A public or private way including but not limited to roads, alley, and other rights-of-way for vehicular and/or pedestrian use.

Road Frontage: The linear distance connecting the intersections of the front lot line with the side lot lines.

Road Types: Classification of roadways based on the character of service and access functions they are intended to provide as determined by the City Planner or Planning Board for projects reviewed or to be reviewed by the Planning Board and by the Code Enforcement Officer for all other projects.

Road, Gravel: An unpaved road constructed of material as described in section 916.5.

Rubbish: Any discarded, worn-out, abandoned, or non-functioning article or articles or materials including but not limited to tin cans, bottles, used wood products, junk appliances, junk automobiles, or parts thereof, old clothing, or household goods. The word "rubbish" shall include the words "trash," "waste materials," and "refuse."

Rural Area: Area of land as defined in the Comprehensive Plan.

Sawmill: A facility where logs or partially processed cants are sawn, split, shaved, stripped, chipped, or otherwise processed to produce wood products, not including the processing of timber for use on the same lot by the owner or resident of that lot.

Service Drop: Any utility line extension which does not cross or run beneath any portion of a water body provided that: 1) in the case of electric service: a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon an accessway right-of-way; and b. the total length of the extension is less than 1,000 feet. 2) in the case of telephone service: a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or b. the extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

Service Road: A public or private road, auxiliary to a collector or an arterial road, which has as its purpose the maintenance of traffic mobility and safety off the collector and arterial to which it serves, and access management to the parcels adjacent to it.

Setback from a Property Line: The horizontal distance from a side or rear property line to the nearest part of a structure or other regulated object or area.

Setback from the Edge of a Right-of-way: The horizontal distance from a right of way to the nearest part of a structure or other regulated object or area

Setback, Shoreline: The horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, accessway, parking lot or other regulated object or area.

Setback: The horizontal distance from a lot line to the nearest part of a structure.

Shared Access: An access connecting two or more sites to the public street system.

Shopping Center: One or a group of retail and other commercial establishments that is planned, owned and managed as a single property. On-site parking is provided: 1) **Small:** Maximum of three businesses; total maximum building square footage of 15,000; 2) **Community:** Total maximum building square footage of 100,000 square foot; and 3) **Big-Box:** Any establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location, and any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet. Other retail business establishments on the same site as the large-scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas.

Shoreland Zone: The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream, as defined, and/or streams mapped on the Official Land Use Map.

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

Shrub: A self-supporting woody perennial plant of low to medium height characterized by multiple stems and branches continuous from the base, usually not more than ten feet in height at its maturity.

Sidewalk: An improved pedestrian surface that is typically located adjacent to a road.

Sign Setback. The minimum distance required between any property line and any portion of a sign or sight structural support.

Sign, back-lit. An indirect source of light which illuminates a sign by shining through a translucent surfaced of a sign, including plastic signs, lit from an internal light source.

Sign: A sign is an object, devise or structure, or part thereof, situated outdoors or displayed in a window, visible from a public access way, free standing or attached, which is used to advertise, identify, display direct or attract attention to an object, person, institution, organization, business, product, service, event, or location, by any means including words, letters, figures, design, symbols, fixtures, colors, illuminations or projected images.

Skid Road or Skid Trail: A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

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

Source Water Protection Area: The areas that contribute water to a pond, lake, stream or well as shown on the most recent Ellsworth Public Water Supply Source Protection Areas Maps prepared by the Maine Drinking Water Program, Source Protection section.

Special Use: A governmental or public service use providing public health, safety, comfort, convenience, or the general welfare for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-municipal organization, including by way of illustration, municipal buildings, schools, public parks and recreational facilities, cemetery, public art, museum, interpretation center, public parking, fire stations, ambulance services, highway garage, distribution and transmission of essential services ; essential facilities, hospital, Federal Aviation Administration –designated commercial service airport, heliport.

SSHB: Standard Specifications for Highways and Bridges as published by the Maine Department of Transportation

Stable: A structure or land use in or on which equines are kept for the sale or hire to the public. Breeding, boarding, or training of equines may also be conducted.

Storage, Bulk: On-site storage of any soil, gravel, clay, mud, debris, vegetation, refuse of any other material, organic or inorganic in a concentrated state.

Store, Convenience: A retail establishment which accommodate neighborhood needs for groceries and which may sell, as accessory uses, prepared food for carry-out. The sales area of

such use shall be indoors only, and the total enclosed area for such use shall not exceed 4,000 square feet.

Stormwater Management Plan: A comprehensive plan including notes, plans, specifications and details which, when implemented, provides methods, structures and mechanisms intended to manage stormwater on a site. The plan also incorporates methods, techniques, designs, practices and other means to control erosion and sedimentation.

Stormwater: The part of precipitation, including runoff from rain or melting ice and snow, that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways.

Story: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or a perennial or intermittent stream shown as such on the most recent edition of a United States Geological Survey 7.5 minute series topographic map and/or mapped on the Official Land Use Map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Street: A public or private way including but not limited to roads, alley, and other rights-of-way for vehicular use.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than ten square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements. The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window. The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

Subdivision Sign. A permanent sign that identifies the name of a residential subdivision or apartment building.

Subdivision, Major: Any division containing more than four lots or any subdivision containing a proposed public street.

Subdivision, Minor: Any division containing four lots or less, and in which no street is proposed to be constructed.

Subdivision: Means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term subdivision also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless: (1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or (2) The division of the tract or parcel is otherwise exempt under this subchapter. B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The Planning Board shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing. C. A lot of 40 or more acres will be counted as a lot by this ordinance. D.1 A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision Ordinance. D.2 A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision Ordinance. D.3 A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision Ordinance. D.4 A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision Ordinance. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph cannot be given for consideration that is more than 1/2 the assessed value of the real estate. D.5 A division accomplished by a gift to the City if the City accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision Ordinance. D.6 A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of Chapter 28 Subdivision

Ordinance. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection. D.7 The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision. F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land. G. Notwithstanding the provisions of this subsection, leased units, with the exception of condominiums, are not subject to subdivision review as the units are subject to Major Site Development Review which is as stringent as that required under this subchapter.

Substantial Change: Activities that alter the character, or the size or scope of a project including structures, buildings, sites, appliances, apparatus or equipment beyond the existing design costing more than 50% of the existing value of the buildings, appliances, etc.

Substantial Start: Completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.

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

Sustained Slope: A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Technical Review Team: The Technical Review Team consists of the following Ellsworth Staff: Fire Chief, Police Chief, Public Works Director and/or designees (Water Superintendent, Sewer Superintendent, and Highway Foreman), and City Planner, and may include the City Manager and a member of the City Council.

Telecommunications Tower: A structure designed and constructed to support one or more antennas used by commercial wireless telecommunication facilities and including all appurtenant devices attached to it. A tower can be freestanding (solely self-supported by attachment to the ground) or supported (attached directly to the ground and with guy wires), of either lattice or monopole construction.

Tidal Waters: All waters affected by tidal action during the highest annual tide.

Timber Harvesting and Related Activities: Timber harvesting, the construction and maintenance of accessways and land management roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 410.14, Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

Tract (or Parcel) of Land: All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road. Land in the same ownership that is separated by an intermittent or non-navigable stream or tidal waters where there is no flow at low tide shall be considered part of the same tract or parcel of land.

Trailer: A vehicle without motive power and not intended for human occupancy, designed to be towed by a motor vehicle including a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Transit: Passenger services provided by public, private, or nonprofit entities such as, but not limited to, fixed route bus.

Tree, shade: A woody plant, usually deciduous, that normally grows with one main trunk and has a canopy that screens or filters the sun in the summer.

Tree: Any self supporting woody perennial plant which has a diameter at breast height (DBH) of two inches or more and which normally attains an overall height of at least 15 feet at maturity, usually with one main stem or trunk and many branches.

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

Trip Generation: An estimate of the peak number of vehicle trip ends generated for a selected use or project used to estimate an ADT. It shall be as determined from 1) "Trip Generation" as published by the Institute of Transportation Engineers (latest edition) or 2) specific traffic counts provided by an Engineer.

Trip or Trip End: A single or one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a study site. For trip generation purposes, the total trip ends for a land use over a period of time are the total of all trips entering plus all trips exiting a site during a designated time period

Upland Edge of a Wetland: The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 6 meters (approximately 20 feet) tall or taller.

Urban Core: An area of land shown on a map as defined by the City Council.

Use: The purpose for which land or a building or structure is arranged, designed or intended, or for which it is occupied.

Utility Pole: Pole used to support essential services such as power, telephone, or cable television lines; or used to support street or pedestrian way lighting, typically located in public right-of-way.

Variance: A relaxation of the terms of this ordinance where such variance would not be contrary to the public interest where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this ordinance would result in unnecessary or undue hardship.

Vegetation: All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4½ feet above ground level.

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

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

Walkway: An off-street pedestrian path.

Wall Sign. A sign attached to or painted on a wall of a building, a window, or structure so that the wall forms the supporting structure or becomes the background of the sign. Also included as a wall sign are roof signs and awning signs.

Warehouse: Facilities characterized by extensive warehousing, frequent heavy trucking activity, or fully enclosed storage of material.

Water Body: Any great pond, river or stream.

Water Crossing: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to accessways, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Watershed: The land area that drains, via overland flow, drainageways, waterbodies or wetlands to a given waterbody or wetland.

Wetland, Coastal: All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream, such that in a natural state, the combined surface area is in excess of 10 acres; and 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition

Wetland: A freshwater or coastal wetland.

Wholesaling: A business establishment engaged in the bulk sale of goods or materials not manufactured or processed on the premises.

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

Window Sign. A sign that is applied to or attached to the exterior or interior of a window or located in such a manner within a building that it is visible from the exterior of the building

through a window, but excludes merchandise display. Window signs, graphics and text located more than 12 inches from the face of the window are not considered signs.

Woody Vegetation: Live trees or woody, non-herbaceous shrubs.

Yard: On the same lot with a principal building, a space which is open to the sky and unoccupied by any structures except a fence not more than six feet in height.

Zoning Acre: A measure of land containing 40,000 square feet.

CHAPTER 57
FRENCHMAN BAY REGIONAL SHELLFISH CONSERVATION
ORDINANCE
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted by City Council April 19, 2010
Amended by City Council October 17, 2011
Amended by City Council July 15, 2013
Amended by City Council June 16, 2014
Repealed and Replaced by City Council April 17, 2017

**FRENCHMAN BAY
REGIONAL SHELLFISH CONSERVATION
ORDINANCE**

**For the Municipalities of:
Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton**

As adopted in 2010

Revised 2011/2012

Revised 2013

Revised 3/18/2014

Revised 5/27/2014

Revised 2/23/2017 (Master Copy)

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

Management Partnership Team

Frenchman Bay Regional Shellfish Conservation Committee

&

Frenchman Bay Regional Shellfish Municipal Joint Board

**FRENCHMAN BAY REGIONAL SHELLFISH
CONSERVATION ORDINANCE**

Municipalities of Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton

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

1. **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.
2. **Purpose:** To establish a shellfish conservation program for the participating municipalities, which shall insure the protection and optimum utilization of shellfish resources within its limits. These goals shall be achieved by means, which may include, but not be limited to:
 - A. Licensing.
 - B. Limiting the number of shellfish harvesters.
 - C. Restricting the time and area where digging is permitted.
 - D. Limiting the minimum size of clams taken.
 - E. Limiting the amount of shellfish taken daily by a harvester.
 - F. Intertidal Management Plan

3. **Administration**

3.1 The Frenchman Bay Regional Shellfish Conservation Committee: The Regional Shellfish Management Program for the participating municipalities shall be administered by the Frenchman Bay Regional Shellfish Municipal Joint Board (Municipal Joint Board) with technical input from the Frenchman Bay Regional Shellfish Conservation Committee (Conservation Committee). The Conservation Committee shall consist of one member and may include one alternate member for each participating municipality. A non-resident may be appointed by a municipality to represent that municipality on the Conservation Committee. Conservation Committee Members shall be commercial harvesters licensed under this Ordinance, if they are available and willing to serve, and shall be appointed by the municipal officers of the participating municipalities and in accordance with the procedures outlined in this document for terms of up to three (3) years. A quorum shall consist of a majority of the members.

- A. **Selection of Regional Shellfish Conservation Committee Members:** Selectmen/Council members of each of the participating municipalities shall appoint, and replace as necessary, Conservation Committee members according to their own policies and procedures.
- B. **Meetings:** The Chairman of the Shellfish Conservation Committee shall be elected at the first meeting of each calendar year by the members of the Conservation Committee. A quorum shall consist of a majority of the members of the Committee. Notice of all meetings of the Conservation Committee shall be given to each member of the Conservation Committee and the Chairman of the Municipal Joint

Board, shall be published in accordance with each town's policies, and shall be open to the public. Minutes shall be recorded and made available for public review.

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

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

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

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

iv. Submitting an annual report to the participating municipalities covering the aforementioned topics and other Committee activities by February 1.

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

vi. By February 1 of each year submit an Annual Shellfish Management Review to the Municipal Joint Board for their review and approval, prior to submitting to the Department of Marine Resources by its April 1 deadline for review/approval.

vii. By April 1 of each year submit an Annual Shellfish License Sales and Lottery Procedure Plan to the Municipal Joint Board for approval. This plan shall outline in detail how many licenses are to be allocated on an annual basis and shall be consistent with 12 M.R.S.A Section 6671 (3-A) and DMR Regulation Chapter 7. After Municipal Joint Board approval, the Conservation Committee shall submit the Annual Shellfish License Sales and Lottery Procedure Plan to the Department of Marine Resources for approval. After receiving approval for license allocations from the Commissioner of Marine Resources, the Conservation Committee shall notify the Administrative Municipality, in writing, the number of shellfish licenses to be issued.

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

E. Convictions: Anyone convicted of violating this ordinance shall be removed from the Shellfish Conservation Committee.

3.2. FRENCHMAN BAY REGIONAL SHELLFISH MUNICIPAL JOINT BOARD:

Each of the participating municipalities shall appoint one municipal officer (Selectman/Council member), or a designee, as a member of the Municipal Joint Board to act as the municipality representative for all issues concerning this Ordinance. Each of the participating municipalities may also appoint one individual as an alternate member of the

Municipal Joint Board to represent the respective municipal officer during an absence at a Municipal Joint Board meeting. The designee, and alternate, must be a resident of the participating municipality and does not need to be a municipal officer (Selectman/Councilman). The person so appointed shall serve at the pleasure of the body that made the appointment and may be replaced thereby.

A. Meetings: The Chairman of the Municipal Joint Board shall be elected at the first meeting of each calendar year by the members of the Municipal Joint Board. A quorum shall consist of a majority of the members of the Board. Notice of all meetings of the Municipal Joint Board shall be given to each member of the Board and the Chairman of the Regional Shellfish Conservation Committee, shall be published in accordance with each town's policies, and shall be open to the public. Minutes shall be recorded and made available for public review.

B. Powers: The Municipal Joint Board is authorized to approve the number of shellfish harvesting licenses to be issued, approve license fees, open and close the flats, set times when harvesting is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by the Board of Selectmen/Council of each of the participating municipalities, and subject to the Department of Marine Resources approval as noted in Section 6, based upon the recommendations of the Regional Shellfish Conservation Committee. These actions shall be described in an Annual Shellfish Management Plan submitted by the Regional Shellfish Conservation Committee.

4. Definitions

A. Resident: The term "resident" refers to a person being a Maine resident who has proof of being domiciled in at least one of the participating communities continuously for a minimum of six months prior to the time their claim of such residence is made and/or whom has paid real estate taxes in at least one of these participating communities continuously for at least five years. In order to determine resident eligibility new residents shall provide two forms of proof of residency from the list below. At least one shall be from Section 3 in the chart below. All licensed harvesters will provide proof of residency on an annual basis.

Section 1	Section 2	Section 3
*Copy of deed AND record of most recent mortgage payment	A utility bill or other work order dated within the past 60 days including:	*Any valid form of photo ID and proof of residency that may include:
*Copy of Lease AND record of most recent legal affidavit from landlord affirming tenancy.	*Gas Bill	*A valid Maine Drivers License displaying physical address.
*Legal affidavit from landlord affirming tenancy AND record of	*Oil Bill	*A valid Maine photo ID card displaying physical address.
	*Electric Bill	
	*Telephone Bill	
	*Cable or Satellite Bill	
	Dated within the past year:	
	*W-2 Form	
	*Excise (vehicle) tax bill	

<p>most recent rent payment.</p>	<p>*Property tax bill *Dated within the past 60 days: *Letter from approved government agency *Payroll Stub *Bank or credit card statement</p>	<p>*A current vehicle registration that displays a physical address.</p>
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- B. **Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.

- C. **Shellfish, Clams and Intertidal Shellfish Resources:** When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), and hen clams (*Spisula solidissima*).

- D. **Municipality:** Refers to the municipalities of Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton, Maine. Wherever the words "town" or "community" may be used, they are intended to mean municipality.

- E. **Administrative Municipality:** The municipality that administers this Ordinance and the directives of the Municipal Joint Board.

- F. **Annual Shellfish License Sales and Lottery Procedure Plan:** A plan written by the Conservation Committee and submitted to the Municipal Joint Board, by April 1 of each year, for approval. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall establish priority status for the allocation of licenses as referred to in Section 5.3.

- G. **Annual Shellfish Management Review:** A detailed shellfish resource management plan written on an annual basis by the Frenchman Bay Regional Shellfish Conservation Committee and submitted to, and approved by, the Frenchman Bay Regional Shellfish Municipal Joint Board for submission to, and approval by, the Maine Department of Marine Resources. Said plan shall define actions to be taken regarding the number of licenses to be issued, re-seeding activities, conservation closures, limits on allowable harvest and harvesting days and times, and other measures taken to ensure a sustainable harvest of the resource.

- H. **Conservation Work:** The term Conservation Work or Conservation Time, as used in this ordinance, shall be broadly defined and shall include the time accrued for work spent performing, but is not limited to, such activities as shellfish reseedling, pollution abatement, predator eradication, shellfish surveying, information gathering, testing and sampling, and any other activity that the Shellfish Conservation Committee deems as supporting shellfish resource enhancement and the Frenchman Bay Regional Shellfish Management Program. All such Conservation Work activities must be approved by the Municipal Joint Board.

- I. **First-time Commercial License:** Is 1) a commercial license of any class issued to an individual who has never held a commercial license of any class, or 2) the

issuance of a commercial license of any class issued to an individual who has not held a commercial license of any class during the previous twelve (12) months, at time of application.

5. **LICENSING:**

A Frenchman Bay Regional Shellfish License is required to harvest shellfish in the jurisdiction of this Ordinance. It is unlawful for any person to dig or take shellfish from the shores and flats of the participating communities for the purpose of selling the shellfish without having a current commercial license issued by the Administrative Municipality as provided by this Ordinance. Additionally, a commercial harvester must have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting shellfish for commercial purposes. It shall be unlawful for any individual whose State of Maine Commercial Shellfish License, or right to harvest, has been suspended by the State of Maine to harvest or possess shellfish without proof of purchase. Also, if such individual currently holds a municipal license, such license shall be suspended for the same period of time. Any restrictions on licenses regarding the harvest of shellfish as defined in this ordinance shall be outlined in the Annual Shellfish License Sales and Lottery Procedure Plan developed by the Regional Shellfish Conservation Committee and approved by the Municipal Joint Board.

Licensing Requirements: All license sales shall be conducted as described in the Annual Shellfish License Sales and Lottery Procedure Plan developed each year by the Frenchman Bay Regional Shellfish Conservation Committee.

5.1 Designation, Scope and Qualifications:

A. Resident Commercial Shellfish License: This license is available to residents of a municipality who are also State of Maine Residents and/or real estate tax payers in at least one of the participating municipalities, consistent with Section 4.A., above and entitles the holder to dig and take any amount of shellfish from the shores and flats of the participating municipalities.

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

C. Resident Junior Commercial Shellfish License: This license is available to residents of a participating municipality who are younger than age 19 at the time of license application and entitles the holder to dig and take any amount of shellfish from the shores and flats of the participating municipalities.

D. Nonresident Junior Commercial Shellfish License: This license is available to nonresidents of the participating municipalities who are younger than age 19 at the time of license application and entitles the holder to dig and take any amount of shellfish from the shores and flats of the participating municipalities.

E. Resident Senior Commercial License: This license is available to senior residents of a participating municipality who are over the age of 65 at the time of

license application and entitles the holder to dig and take any amount of shellfish from the shore and flats of the participating municipalities.

F. Non-Resident Senior Commercial License: This license is available to nonresident seniors of the participating municipalities who are over the age of 65 at the time of license application and entitles the holder to dig and take any amount of shellfish from the shores and flats of the participating municipalities.

G. Residential Family/Individual Recreational Shellfish License: This license is available to Residents and Maine resident real estate taxpayers of the participating municipalities, consistent with Section 4.A., above, who do not hold a valid State of Maine Commercial Shellfish License and entitles the family to dig and take no more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of their self and their family. Residents with an Aquaculture Lease Permit shall be exempt and eligible for a recreational license.

H. Nonresident Family/Individual Recreational Shellfish License: This license is available to any person not a resident of one of the participating municipalities who does not hold a valid State of Maine Commercial Shellfish License and entitles the family to dig and take not more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of their self and their family. Nonresidents with an Aquaculture Lease Permit shall be exempt and eligible for a recreational license.

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

5.2 Fees: A schedule of fees shall be available at the Administrative Municipality offices. The fees for the licenses shall be determined annually by the Shellfish Conservation Committee and Municipal Joint Board. Licensees shall submit fees, in full upon issuance of license. Fees received for shellfish licenses shall be used by the Administrative Municipality to support the Frenchman Bay Regional Shellfish Conservation Ordinance. Sale of recreational licenses shall be the responsibility of each participating municipality. Any and all fees and license sales for recreational licenses shall be collected by the participating municipalities and sent to the Administrative Municipality quarterly, except for a \$3.00 agent fee per license that will be retained by the issuing municipality.

Applicants for a resident or non-resident renewal commercial shellfish harvester license and resident senior or non-resident senior renewal commercial shellfish harvester license may volunteer to perform shellfish conservation work in exchange for a reduction in the renewal commercial license fee as described in Section 5.4-B, below. Generally, each hour of conservation work performed will be credited at \$15 so those conservation hours worked, multiplied by \$15, may be deducted from the full renewal commercial license fee, **except** that Resident Junior Commercial renewal license and Non-resident Junior Commercial renewal licenses may be

purchased without performing any Conservation Work. A resident junior license shall be half the cost of a regular commercial resident license. A nonresident junior license shall be half the cost of a regular commercial nonresident license. A resident senior commercial license shall be half the cost of, and require only half of the voluntary conservation time necessary for, a regular commercial resident license. A non-resident senior commercial license shall be half the cost of, and require only half of the voluntary conservation time necessary for, a regular commercial non-resident license.

First-time commercial licenses will be sold at the lowest fee for each class of commercial license.

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

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

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

C. Address change: A person holding a commercial shellfish license under this ordinance shall notify the town clerk of the Administrative Town within ninety (90) days of address change outside of the participating municipalities. Failure to do so will be considered and treated as misrepresentation.

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

A. The Clerk of the Administrative Municipality shall issue licenses to those residents and non-residents who have met the requirements of obtaining a

commercial license. The Town Clerk shall issue licenses and hold a lottery for nonresident commercial licenses by procedure described in the Annual Shellfish License Allocation Procedure Plan.

B. Optional Conservation Work may be completed prior to the renewal of a municipal commercial shellfish license to reduce the license cost in accordance with the Annual Shellfish License Sales and Lottery Procedure Plan. The performance of Conservation Work in order to accrue Conservation Time is optional and may be credited as described below:

1) Resident or non-resident commercial renewal shellfish licenses may be purchased without performing conservation work, however, the performance of Conservation Work will reduce a resident or non-resident renewal commercial shellfish license fee by \$15 for each hour worked, up to twelve (12) hours.

2) Resident junior or non-resident junior commercial renewal shellfish licenses may be purchased without performing conservation work.

3) Resident senior or non-resident senior commercial renewal shellfish licenses may be purchased without performing conservation work, however, the performance of Conservation Work will reduce a resident senior or non-resident senior renewal commercial shellfish license fee by \$15 for each hour worked, up to six (6) hours.

4) First-time commercial licenses may be purchased at the lowest fee for each class of commercial license.

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

D. Details explaining how licenses will be issued will be described in the Annual Shellfish License Sales and Lottery Procedure Plan.

5.5 **Limitation of Diggers:** The number of commercial licenses may be limited and will be issued according to the Annual Shellfish License Sales and Lottery Procedure Plan.

A. If it is determined that Limited Licenses are necessary, the Administrative Community shall issue licenses to residents and nonresidents as described in the Annual Shellfish License Sales and Lottery Procedure Plan.

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

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

- 5.7 **License Expiration Date:** Each license issued under authority of this ordinance expires at midnight on June 30th of each year.
- 5.8 **Fee Waivers:** Recreational shellfish license fees are not required for individuals 65 years or older and younger than age 13 at the time of license application.
6. **Opening and Closing of Flats:** The Municipal Joint Board in conjunction with the Shellfish Conservation Committee, upon approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Shellfish Conservation Committee and Municipal Joint Board may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Joint Board and Shellfish Conservation Committee made after the hearing shall be based on findings of fact.
7. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within participating municipalities that are less than two (2) inches in the longest diameter except as provided by Subsection 7.2 of this section.
- 7.1 **Definitions:**
- A. **Lot:** The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
- B. **Possess:** For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- 7.2 **Tolerance:** Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.
- 7.3 **Penalty:** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.
8. **Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10) (10-A) (10-B).
9. **Effective Date:** This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the member municipalities provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. **Severability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

11. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the member communities and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.
12. **Use of Fees and Fines, Funding:** Fees for shellfish licenses shall be set forth in the Annual Shellfish Management plan and shall accompany the application for the respective license. Fees and fines received shall be used for costs incurred in the enforcement and management of this ordinance.
 - 12.1 **Non-lapse Provision:** Monies in the Municipal Shellfish Account shall not lapse at the end of the year but shall be carried over to the next year in that account.
 - 12.2 **Funding:** The Municipal Shellfish Program shall be self-supporting, to the extent possible. Funds for operating the Program may be generated by license fees, fines, and financial support from participating communities, fund-raising events, and charitable contributions.

13. **VIOLATIONS, SUSPENSION OF LICENSES, AND FINES:**

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

13-A. Costs and Attorney's Fees: In addition to any penalty assessed for any violation of this ordinance, if the municipality is the prevailing party, the municipality shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

Classifications of violations are categorized as follows:

- 13.1 **Stopping for inspection:** A person shall produce their license on demand of any certified Municipal Shellfish Conservation Warden in uniform and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:
 - A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.
 - B. After the person has stopped, to fail to remain stopped until the said Warden has reached his/her immediate vicinity and makes known to the operator the reason for his/her request or signal.
 - C. To fail or refuse to stand by immediately for inspection on request of said Warden.

- D. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.
- E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: Penalties shall be assessed in accordance with Maine Department of Marine Resources statutes and regulations.

- 13.2 Harvesting Clams in any Closed Area:** It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by those 7 municipalities included in the Frenchman Bay Regional Shellfish Conservation Ordinance, namely the municipalities of Ellsworth, Lamoine, Trenton, Hancock, Franklin, Sullivan, and Sorrento, in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of the regional ordinance of these municipalities and is punishable under MRSA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted on behalf of the seven (7) above-named municipalities to DMR and are part of the resulting permit issued by DMR. These permits are posted on the website of the City of Ellsworth, the administrative municipality for the seven (7) municipality regional ordinance, and also online at:

<http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html>

Penalties: Penalties shall be assessed in accordance with Maine Department of Marine Resources statutes and regulations.

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

Penalties: Penalties shall be assessed in accordance with Maine Department of Marine Resources statutes and regulations.

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

Penalties: Penalties shall be assessed in accordance with Maine Department of Marine Resources statutes and regulations.

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

Penalties: Penalties shall be assessed in accordance with Maine Department of Marine Resources statutes and regulations.

13.6 Suspension: A person licensed under this ordinance who has had their State of Maine Commercial Shellfish License suspended shall forfeit their Frenchman Bay Regional Shellfish Conservation Ordinance license (Regional License) for the duration of the State of Maine Commercial Shellfish License suspension. Such a person in possession of shellfish must carry a receipt of purchase for said shellfish. Any shellfish licensee having three convictions for a violation of this ordinance within a three year period shall have their shellfish license suspended for a period of thirty (30) days.

13.7 (Intentionally left blank.)

13.8 (Intentionally left blank.)

14. ENFORCEMENT: This ordinance shall be enforced by the certified Municipal Shellfish Conservation Warden or any Municipal Shellfish Conservation Warden appointed by the Municipal Joint Board who, within one year of appointment, must be certified by the Commissioner of the Maine DMR. An enforcement action shall be filed in the name of the municipality where the violation was alleged to have occurred.

15. AMENDMENTS

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

A. A written petition submitted with the number of voters in the participating municipalities equal to at least ten percent of the voters in the last gubernatorial election;

B. A recommendation of the Regional Shellfish Conservation Committee; or

C. A recommendation of the Municipal Joint Board.

15.2 Procedure:

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

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

15.3 Adoption: This Ordinance may be amended by a majority vote of the Municipal Joint Board, after proposed changes have been reviewed by the Department of Marine Resources. Note: Ellsworth’s charter requires Council action.

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

Adoption:

WHEREAS: In consideration of all of the above, and IN WITNESS WHEREOF, the parties have by their duly authorized officers caused this Ordinance to be adopted in all parts this **23rd** day of **February, 2017**.

<u>Municipality</u>	<u>Signature</u>	<u>Name/Title</u>
Sorrento _____		Craig Clement, Joint Board Member
Sullivan _____		Gary Edwards, Joint Board Member
Franklin _____		Dana Smith, Joint Board Member
Hancock _____		Roger Dubois, Joint Board Member
Ellsworth _____		Stephen Beatham, Joint Board Member
Lamoine _____		Richard Fennelly, Joint Board Member
Trenton _____		Mike Hodgkins, Joint Board Member

**City of Ellsworth
Chapter 58
PROPERTY ASSESSED CLEAN
ENERGY (PACE) ORDINANCE**



Adopted: May 16, 2011

**PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.
Chapter 58**

PREAMBLE

WHEREAS, the 124th Maine Legislature has enacted Public Law 2009, Chapter 591, “An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act”; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City of Ellsworth, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

WHEREAS, Ellsworth wishes to establish a PACE program; and

NOW THEREFORE, Ellsworth hereby enacts the following Ordinance:

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

1 Purpose

By and through this Chapter, the City of Ellsworth declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City. The City declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

2 Enabling Legislation

The City enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124th Maine State Legislature -- “An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act” (codified at 35-A M.R.S.A. § 10151, *et seq.*).

ARTICLE II - TITLE AND DEFINITIONS

3 Title

This Ordinance shall be known and may be cited as “the City of Ellsworth Property Assessed Clean Energy (PACE) Ordinance” (the “Ordinance”).”

4 Definitions

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

1. **Energy saving improvement:** means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:
 - A. Will result in increased energy efficiency and substantially reduced energy use and:
 - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential property in a manner approved by the Trust; or
 - B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.
2. **Municipality:** means the City of Ellsworth.
3. **PACE agreement:** means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
4. **PACE assessment:** means an assessment made against qualifying property to repay a PACE loan.
5. **PACE district:** means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality's boundaries.
6. **PACE loan:** means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.
7. **PACE mortgage:** means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. **PACE program:** means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
9. **Qualifying property:** means real property located in the PACE district of the City.
10. **Renewable energy installation:** means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar

thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

11. **Trust:** means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

ARTICLE III - PACE PROGRAM

1. **Establishment; funding.** The City of Ellsworth hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in Ellsworth as the City has adopted this Ordinance; and as the City plans to adopt and implement a local public outreach and education plan; enters into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and agrees to assist and cooperate with the Trust in its administration of the City's PACE program.
2. **Amendment to PACE program.** In addition, the City may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

1. **Standards adopted; Rules promulgated; model documents.** If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the City shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

1. **Program Administration**
 - A. **PACE Administration Contract.** Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the City will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the City. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- i. the Trust will enter into PACE agreements with owners of qualifying property in the City's PACE district;
- ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the Hancock County Registry of Deeds to create a PACE mortgage;
- iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
- iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
- v. the Trust, or its agent, will be responsible for collection of the PACE assessments;
- vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;
- vii. the Trust or its agent on behalf of the City, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

- B. Adoption of Education and Outreach Program.** In conjunction with adopting this Ordinance, the City shall adopt and implement an education and outreach program so that citizens of Ellsworth are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.
- C. Assistance and Cooperation.** The City will assist and cooperate with the Trust in its administration of the Municipality's PACE program.
- D. Assessments Not a Tax.** PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

2. Liability of City Officials; Liability of City

- A.** Notwithstanding any other provision of law to the contrary, the Ellsworth City Council and City officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.
- B.** Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, the City has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

CHAPTER 59
City of Ellsworth, Maine

**Consumer Fireworks
and
Commercial Outdoor Public Fireworks/Pyrotechnics Display
Ordinance**

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted April 16, 2012
Amended December 15, 2014
Amended June 15, 2015

Amended August 7, 2015

This ordinance shall be known as "Consumer Fireworks and Commercial Outdoor Public Display of Fireworks/Pyrotechnics Ordinance City of Ellsworth, Maine".

Section 1 AUTHORITY

1.1 This ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and MRSA Title 30-A § 3001, and MRSA Title 8, Chapter 9-A: Fireworks

Section 2 APPLICABILITY

2.1 This ordinance shall apply to any person involved in consumer fireworks retail sales, consumer fireworks use, or a commercial outdoor public fireworks/pyrotechnics display within the City of Ellsworth.

Section 3 PURPOSE

3.1 To regulate the sale and use of consumer fireworks, receive notification of commercial outdoor public fireworks/pyrotechnics display activities, within the City of Ellsworth and to provide the necessary information concerning the sale of consumer fireworks and commercial outdoor public fireworks/pyrotechnics display activities within the City.

Section 4 DEFINITIONS

4.1 Consumer Fireworks:

Consumer fireworks shall be as defined in MRSA Title 8, Chapter 9-A. Consumer fireworks does not include the following products as defined by the State Fire Marshal's Office by rule:

A. Missile-Type Rockets:

A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability. Missiles shall not contain more than 20 grams of total chemical composition.

B. Helicopters and Aerial Spinners:

A tube containing more than 20 grams of chemical composition, with a propeller blade attached. Upon ignition, the rapidly spinning device rises into the air. A visible or audible effect may be produced at or near the height of flight.

C. Sky Rockets and Bottle Rockets:

A cylindrical tube containing not more than 20 grams of chemical composition as prescribed under section 3.7 and Table 4.3-1 of the *American Pyrotechnics Association* Standard 87-1 with a wooden stick attached for guidance and stability. Rockets rise into the air upon ignition. A burst of color and/or sound may be produced at or near the height of flight.

D. Sky Lanterns:

Sky lanterns are the type of balloon that requires fire underneath, used to heat the air within the balloon, to propel it into the air.

4.2 Display Fireworks:

Display fireworks means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as consumer fireworks. This term also includes fused set pieces containing components which together exceed 50 mg of salute powder.

4.3 Fireworks:

A. Fireworks means:

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

B. The term, fireworks, does not include consumer fireworks, toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand cannot come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired. (The common or usual name of the product is Fireworks UN0335 or Fireworks 1.3 G.)

4.4 Person:

Person means any individual, combination of individuals, group, association, municipality, amusement park, or other legal or commercial entity.

4.5 Private Display:

Private display means an entertainment feature where the general public is not admitted or invited to view the display or discharge of fireworks, consumer fireworks, or special effects.

4.6 Public Display:

Public display, for the purpose of this ordinance, means an entertainment feature where the general public is admitted or invited, and permitted to view, the display or discharge of fireworks, consumer fireworks, or special effects.

4.7 Pyrotechnic Articles:

Pyrotechnic articles means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use, including articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432.

4.8 Pyrotechnics:

Pyrotechnics means the science of using materials capable of undergoing self-contained and self-sustained exothermic chemical reactions for the production of heat, light, gas, smoke and/or sound. Pyrotechnics include not only the manufacture of fireworks but items such as safety matches, oxygen candles, explosive bolts and fasteners, components of the automotive airbag and gas pressure blasting in mining, quarrying and demolition.

Section 5 PROHIBITED and RESTRICTED USES

5.1 Consumer fireworks shall not be used when the fire danger class, as designated by the Maine Forest Service, is a class 4 or 5 fire danger day.

5.2 The following are prohibited within the City of Ellsworth.

- A.** The use of pyrotechnic articles and consumer fireworks are prohibited within any structure in the City of Ellsworth.
- B.** The sale and use of missile-type rockets, as defined by MRSA Title 8, Chapter 9-A, and the State Fire Marshal's Office.
- C.** The sale and use of helicopters and aerial spinners, as defined by MRSA Title 8, Chapter 9-A and the State Fire Marshal's Office.
- D.** The sale and use of sky rockets and bottle rockets, as defined by MRSA Title 8, Chapter 9-A and the State Fire Marshal's Office.
- E.** The sale and use of sky lanterns as defined in MRSA Title 8, Chapter 9-A and the State Fire Marshal's Office.
- F.** The use of Consumer Fireworks is prohibited on property owned by the City of Ellsworth.
- G.** The use of consumer fireworks is prohibited as shown on the official City of Ellsworth Prohibited Fireworks Area and on the Enlarged Prohibited Fireworks Area Inset Maps, and hereby adopted by reference and made part of this Ordinance. These official maps shall be certified by the attested signature of the City Clerk and shall be located in the City Clerk's Office.

5.3 Except for the sale of consumer fireworks as defined in MRSA Title 8, Chapter 9-A, a person may not sell, possess with the intent to sell, or offer for sale fireworks within the City of Ellsworth.

5.4 Consumer fireworks may be used on Fridays from 6:00pm to 10:00pm and Saturdays from 6:00pm to 10:00pm.

5.5 Consumer fireworks may be used on the following dates between the hours of 9:00am and 12:30am the following day:

A. July 4th

B. December 31st

C. Consumer fireworks may be used from 6:00pm to 10:00pm from the Sunday immediately before July 4th and December 31st to the Thursday immediately following July 4th and December 31st.

5.6 A person may use consumer fireworks only on that person's property, or on the property owned by a person who has consented with written permission, to the use of consumer fireworks on that property.

5.7 Any public display shall conform to the requirements of MRSA Title 8, Chapter 9-A.

A. Notification shall be made to the Ellsworth Police Department of the intent to conduct any public or private display in proximity to fifty (50) or more persons.

B. Notification shall be made to the Ellsworth Public Safety Dispatch at (207) 667-2133.

C. Notification shall be made no less than two (2) days prior to the display.

D. All safety requirements listed on the product shall be followed.

Section 6 SALE OF CONSUMER FIREWORKS

6.1 No person shall operate any establishment or sell from any establishment consumer fireworks within the City of Ellsworth without obtaining a license in accordance with City of Ellsworth Chapter 14, Licenses and Permits Ordinance. The license shall be valid for a period of one year from the date of issuance by the City of Ellsworth. A public hearing is required prior to action on the initial license or renewal.

6.2 No person shall operate any establishment or sell from any establishment consumer fireworks within the City of Ellsworth without obtaining a state license.

6.3 Before an initial license application for the sale of consumer fireworks is submitted to the City of Ellsworth, the applicant shall submit sufficient information and documentation to show compliance with MRSA Title 8, Chapter 9-A, §223-A and Chapter 36 Office of the State Fire Marshal's Rules.

Additionally, an applicant must show:

A. Minimum distances, compliant with MRSA Title 8, Chapter 9-A, §223-A(4), from the proposed permit location to the following:

1. Public ways

2. Buildings

3. Other consumer fireworks retail sales buildings
4. Motor vehicle fuel storage and dispensing facilities
5. Propane storage and dispensing facilities
6. Flammable and combustible liquid aboveground tank storage and dispensing facilities
7. Flammable gas and flammable liquefied gas, bulk aboveground storage and dispensing facilities
8. Vehicle access and parking areas

B. Floor plan and layout of storage and displays of the consumer fireworks product to indicate compliance with state and local laws and regulations which shows:

1. Location and type of portable fire extinguishers
2. All means of egress
3. Construction details

6.4 The applicant must have a valid City of Ellsworth consumer fireworks retail sales license and a valid federal license to sell consumer fireworks prior to submission of an application for a state license to the State Fire Marshal's Office.

6.5 Upon receipt of the state license, the applicant shall submit a copy of the current valid state license to the Fire Chief or his designee.

6.6 Only consumer fireworks may be sold in the City of Ellsworth.

6.7 The consumer fireworks retail sales facility shall make available, to anyone purchasing consumer fireworks, a current list of towns prohibiting or restricting the use of consumer fireworks in Maine and shall post the same information at the point of sale.

Section 7 COMMERCIAL OUTDOOR PUBLIC FIREWORKS/PYROTECHNICS DISPLAY PERMIT

7.1 Permit required.

A commercial outdoor public fireworks/pyrotechnics display permit from the State fire Marshal's Office is required to conduct a commercial outdoor public fireworks/pyrotechnic display within the City of Ellsworth.

- A.** A separate permit is required for each location at which an applicant seeks to conduct a commercial outdoor public fireworks display event.

- B. A copy of the application for a State Fire Marshal's Office permit, for the commercial outdoors public display fireworks/pyrotechnic display event shall be submitted to the Fire Chief or his designee no less than 10 days prior to the event date.

Section 8 CONFLICTS WITH OTHER RULES, REGULATIONS OR LAWS

8.1 Whenever the requirements of this ordinance are in conflict with the requirements of any other lawfully adopted federal, state, or local ordinance, the requirements of the most restrictive or higher standard shall govern, unless, the provisions of the local ordinance is preempted by federal or state laws or regulations.

Section 9 SEVERABILITY

9.1 In the event that any section, subsection, or any provision of this ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, sub-section, or other portion of this ordinance. To that end, the provisions of this ordinance are hereby declared severable.

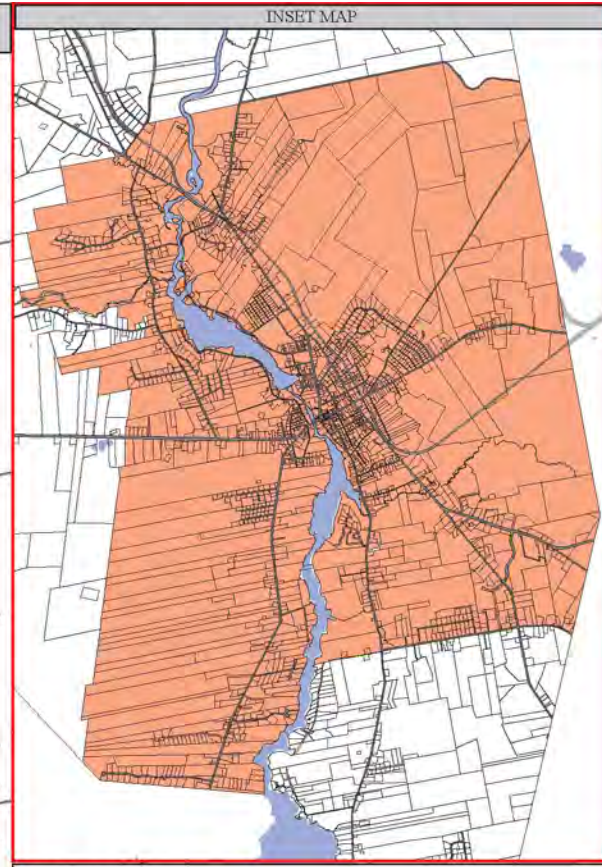
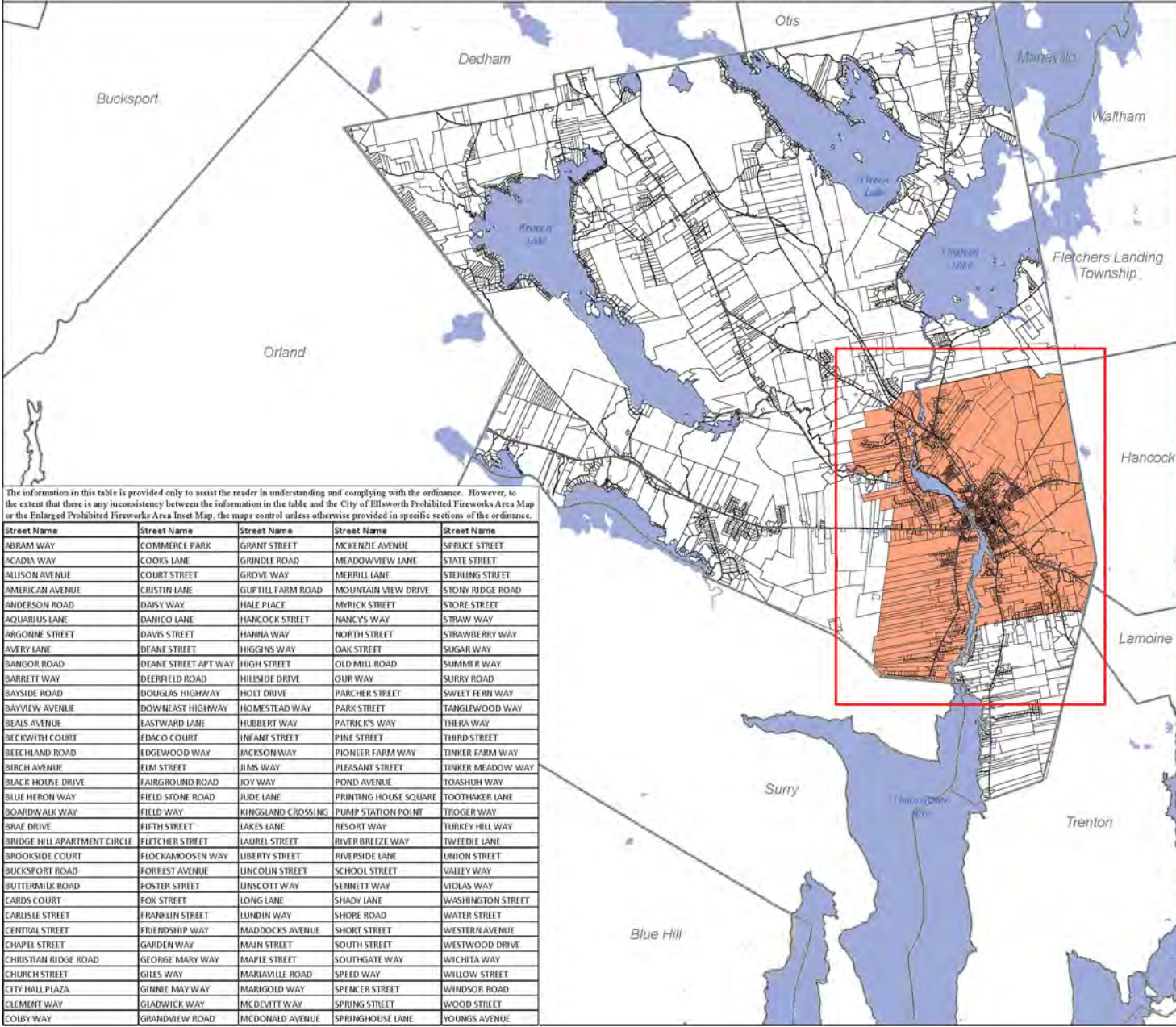
Section 10 PENALTIES

10.1 Any person who violates any provision of this ordinance or the license issued by the City of Ellsworth for consumer fireworks sales, commits a civil violation for which a fine of not less than two hundred fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) may be imposed for each day such offense continues and the City's reasonable fees and expenses, including attorneys fees. Each offense may constitute a separate offense for each day the violation occurs.

Section 11 EFFECTIVE DATE

11.1 This ordinance shall become effective on the date of amendment by the City Of Ellsworth.

CITY OF ELLSWORTH PROHIBITED FIREWORKS AREA MAP



The information in this table is provided only to assist the reader in understanding and complying with the ordinance. However, to the extent that there is any inconsistency between the information in the table and the City of Ellsworth Prohibited Fireworks Area Map or the Enlarged Prohibited Fireworks Area Inset Map, the maps control unless otherwise provided in specific sections of the ordinance.

Street Name	Street Name	Street Name	Street Name	Street Name
ABRAM WAY	COMMERCE PARK	GRANT STREET	MCKENZIE AVENUE	SPRUCE STREET
ACADIA WAY	COOKS LANE	GRINDLE ROAD	MEADOWVIEW LANE	STATE STREET
ALLISON AVENUE	COURT STREET	GROVE WAY	MERRILL LANE	STERLING STREET
AMERICAN AVENUE	CRISTIN LANE	GUPTILL FARM ROAD	MOUNTAIN VIEW DRIVE	STONY RIDGE ROAD
ANDERSON ROAD	DAISY WAY	HALE PLACE	MYRICK STREET	STORE STREET
AQUARIUS LANE	DANICO LANE	HANCOCK STREET	NANCY'S WAY	STRAW WAY
ARGONNE STREET	DAVIS STREET	HAMBIA WAY	NORTH STREET	STRAWBERRY WAY
AVERY LANE	DEANE STREET	HIGGINS WAY	OAK STREET	SUGAR WAY
BANGOR ROAD	DEANE STREET APT WAY	HIGH STREET	OLD MILL ROAD	SUMMER WAY
BARRETT WAY	DEERFIELD ROAD	HILLSIDE DRIVE	OUR WAY	SURRY ROAD
BAYSIDE ROAD	DOUGLAS HIGHWAY	HOLT DRIVE	PARCHER STREET	SWEET FERN WAY
BAYVIEW AVENUE	DOWNEAST HIGHWAY	HOMESTEAD WAY	PARK STREET	TANGLEWOOD WAY
BEALS AVENUE	EASTWARD LANE	HUBBERT WAY	PATRICK'S WAY	THERA WAY
BEEKWITH COURT	EDACO COURT	INFANT STREET	PIKE STREET	THIRD STREET
BEECHLAND ROAD	EDGEWOOD WAY	JACKSON WAY	PIONEER FARM WAY	TINKER FARM WAY
BIRCH AVENUE	ELM STREET	JIMS WAY	PLEASANT STREET	TINKER MEADOW WAY
BLACK HOUSE DRIVE	FAIRGROUND ROAD	JOY WAY	POND AVENUE	TOASHURH WAY
BLUE HERON WAY	FIELD STONE ROAD	JUDE LANE	PRINTING HOUSE SQUARE	TOOTHAKER LANE
BOARDWALK WAY	FIELD WAY	KINGSLAND CROSSING	PUMP STATION POINT	TROGER WAY
BRAE DRIVE	FIFTH STREET	LAKES LANE	RESORT WAY	TURKEY HILL WAY
BRIDGE HILL APARTMENT CIRCLE	FLETCHER STREET	LAMBREI STREET	RIVER BREEZE WAY	TWEDDIE LANE
BROOKSIDE COURT	FLOCKAMOOSEN WAY	LIBERTY STREET	RIVERSIDE LANE	UNION STREET
BUCKSPORT ROAD	FORREST AVENUE	LINCOLN STREET	SCHOOL STREET	VALLEY WAY
BUTTERMILK ROAD	FOSTER STREET	LINSCOTT WAY	SENNETT WAY	VIOLAS WAY
CARDS COURT	FOX STREET	LONG LANE	SHADY LANE	WASHINGTON STREET
CARLISE STREET	FRANKLIN STREET	LUNDIN WAY	SHORE ROAD	WATER STREET
CENTRAL STREET	FRIENDSHIP WAY	MADDOCKS AVENUE	SHORT STREET	WESTERN AVENUE
CHAPEL STREET	GARDEN WAY	MAIN STREET	SOUTH STREET	WESTWOOD DRIVE
CHRISTIAN RIDGE ROAD	GEORGE MARY WAY	MAPLE STREET	SOUTHGATE WAY	WICHITA WAY
CHURCH STREET	GILES WAY	MARIAVILLE ROAD	SPEED WAY	WILLOW STREET
CITY HALL PLAZA	GINNIE MAY WAY	MARIGOLD WAY	SPENCER STREET	WINDSOR ROAD
CLEMENT WAY	GLADWICK WAY	MCDONALD AVENUE	SPRING STREET	WOOD STREET
COBLY WAY	GRANDVIEW ROAD	MCDONALD AVENUE	SPRINGHOUSE LANE	YOUNGS AVENUE

LEGEND

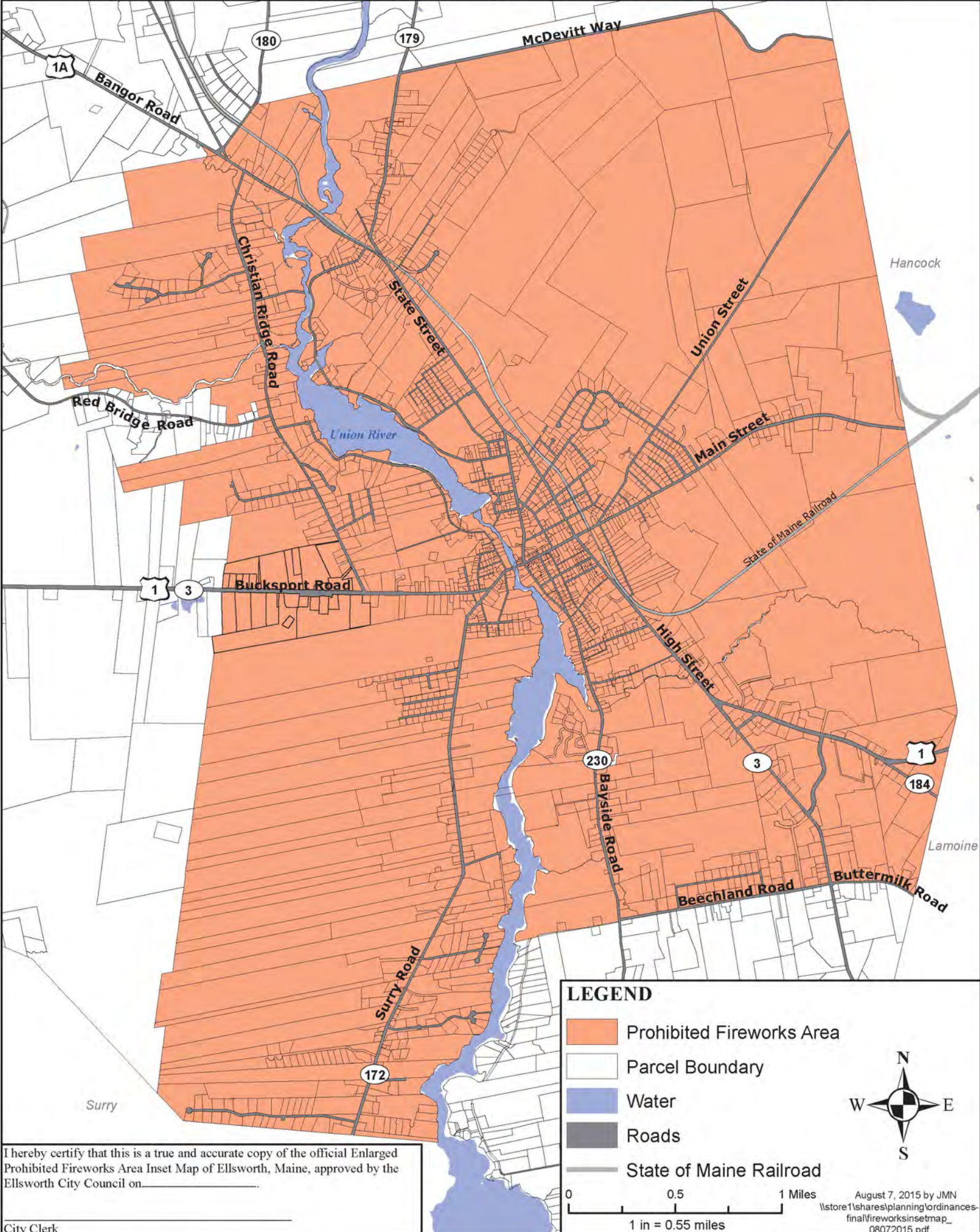
- Prohibited Fireworks Area
- Parcel Boundary
- Municipal Boundary
- Roads
- Water

August 7, 2015 by JNH
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I hereby certify that this is a true and accurate copy of the official City of Ellsworth Prohibited Fireworks Area Map of Ellsworth, Maine, approved by the Ellsworth City Council on _____.

City Clerk _____

ENLARGED PROHIBITED FIREWORKS AREA INSET MAP

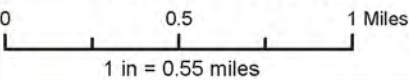


I hereby certify that this is a true and accurate copy of the official Enlarged Prohibited Fireworks Area Inset Map of Ellsworth, Maine, approved by the Ellsworth City Council on _____.

City Clerk _____

LEGEND

- Prohibited Fireworks Area
- Parcel Boundary
- Water
- Roads
- State of Maine Railroad



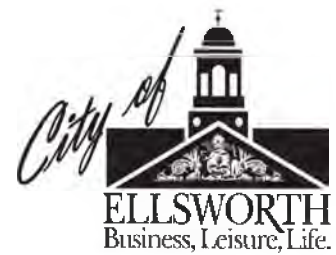
August 7, 2015 by JMN
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City of Ellsworth
Chapter 60

Property Maintenance Ordinance

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted August 19, 2013

101.1 Title.

These regulations shall be known as the *Property Maintenance Ordinance* for the City of Ellsworth, hereinafter referred to as "this code."

101.2 Scope.

The provisions of this ordinance shall apply to all property in Ellsworth other than owner-occupied single family residences. This code will promote the sanitation, protection from the elements, life safety, fire safety and other hazards, and for safe and sanitary maintenance; the responsibility of *owners, operators* and *occupants*; the *occupancy* of existing structures and *premises*, and for administration, enforcement and penalties.

101.3 Intent and Construction.

This code shall be liberally construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued *occupancy* and maintenance of structures and *premises*. Existing structures and *premises* that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

101.4 Severability.

If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be Invalid, such decision shall not affect the validity of the remaining portions of this code.

SECTION 102 APPLICABILITY

102.1 General.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

102.2 Maintenance.

Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or *premises* was constructed, altered or repaired shall be maintained in good working order. No *owner, operator* or *occupant* shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, rooming unit, housekeeping unit, or sleeping unit, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the *owner* or the *owner's* designated agent shall be responsible for the maintenance of buildings, structures and *premises*.

102.3 Application of other codes.

Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *City of Ellsworth Unified Development*

Ordinance, Maine Uniform Building & Energy Code, Maine Uniform Plumbing Code and the National Electric Code.

102.4 Existing remedies.

The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and insanitary.

102.5 Workmanship.

Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a *workmanlike* manner and installed in accordance with the manufacturer's instructions.

102.6 Historic buildings.

The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are determined by the *Code Enforcement Officer* to be safe and in the public interest of health, safety and welfare.

102.7 Referenced codes and standards.

The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.7.1 and 102.7.2.

Exception: Where enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall apply.

102.7.1 Conflicts.

Where conflicts occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

102.7.2 Provisions in referenced codes and standards.

Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

102.8 Requirements not covered by code.

Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the *Code Enforcement Officer*.

102.9 Application of references.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

102.10 Other laws.

The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

PART 2 — ADMINISTRATION AND ENFORCEMENT

SECTION 103 DEFINITIONS

ANCHORED. Secured in a manner that provides positive connection.

APPROVED. *Approved by the Code Enforcement Officer.*

ATTRACTIVE NUISANCE. Something on a piece of property that attracts children but also endangers their safety. For example, unfenced swimming pools, open pits and abandoned refrigerators have all qualified as attractive nuisances. Landowners have a duty to keep their property free of attractive nuisances.

BASEMENT. That portion of a building which is partly or completely below grade.

BATHROOM. A room containing plumbing fixtures including a water closet (flush), bathtub or shower.

BEDROOM. Any room or space with or without a built in closet used or intended to be used for sleeping purposes in either a dwelling or *sleeping unit*.

CODE ENFORCEMENT OFFICER. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

CONDEMN. To adjudge unfit for *occupancy*.

DETACHED. When a structural element is physically disconnected from another.

DETERIORATION. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. That portion of land or property reserved for present or future use by a person or agency other than the legal fee *owner(s)* of the property. The *easement* shall be permitted to be for use under, on or above a said lot or lots.

EQUIPMENT SUPPORT. Those structural members or assemblies of members or

manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.

EXTERIOR PROPERTY. The open space on the *premises* and on adjoining property under the control of *owners* or *operators* of such *premises*.

GARBAGE. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

GUARD. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

HABITABLE SPACE. Space in a structure for living, sleeping, eating or cooking. *Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.*

IMMINENT DANGER. A condition which could cause serious or life-threatening injury or death at any time.

INFESTATION. The presence, within or contiguous to, a structure or *premises* of insects, rats, vermin or other pests.

INOPERABLE MOTOR VEHICLE. A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

INTERCHANGABILITY. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

LABELED. Equipment, materials or products to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-*labeled* items and whose labeling indicates either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.

LET FOR OCCUPANCY or LET. To permit, provide or offer possession or *occupancy* of a dwelling, *dwelling unit, rooming unit, building, premise or structure* by a person who is or is not the legal *owner* of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

NEGLECT. The lack of proper maintenance for a building or *structure*.

NOXIOUS WEEDS. Are weeds in any living stage, such as seeds and reproductive parts, of any parasitic or other plant of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation, or the fish or wildlife resources of the United States or the public health.

OCCUPANCY. The purpose for which a building or portion thereof is utilized or occupied.

OCCUPANT. Any individual living or sleeping in a building, or having possession of a space within a building.

OCCUPIED LIVING SPACE. (1) A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a *dwelling unit* are not *sleeping units*.

(2) Or a room or group of rooms forming a single *habitable space* equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower. (3) Or Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

OPENABLE AREA. That part of a window, skylight or door which is available for unobstructed *ventilation* and which opens directly to the outdoors.

OPERATOR. Any person who has charge, care or control of a structure or *premises* which is let or offered for *occupancy*; including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

OWNER. Any person having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property.

PARTS. Whenever the words "*dwelling unit*", "*dwelling*", "*premises*", "*building*", "*rooming house*", "*rooming unit*", "*housekeeping unit*" or "*story*" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof".

PERSON. An individual, corporation, partnership or any other group acting as a unit.

PEST ELIMINATION. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serves as their food or water; by other *approved pest elimination* methods.

PREMISES. A lot, plot or parcel of land, *easement* or *private right of ways*, including any structures thereon.

PUBLIC WAY. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

ROOMING HOUSE. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, *yard* trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

SCOPE. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

STRUCTURE. That which is built or constructed or a portion thereof, which is permanently fixed to the ground.

TENANT. A person, corporation, partnership or group, whether or not the legal *owner* of record, occupying a building or portion thereof as a unit.

TERMS NOT DEFINED. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

TOILET ROOM. A room containing a water closet or urinal but not a bathtub or shower.

ULTIMATE DEFORMATION. The deformation at which failure occurs and which shall be deemed to occur if the sustainable load reduces to 80 percent or less of the maximum strength.

VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WORKMANLIKE. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

YARD. An open space on the same lot with a structure.

SECTION 104 DEPARTMENT OF CODE ENFORCEMENT

104.1 The Ellsworth Code Enforcement Officer shall be responsible for administering this ordinance.

SECTION 105 DUTIES AND POWERS OF THE CODE ENFORCEMENT OFFICER

105.1 General.

The *Code Enforcement Officer* is hereby authorized and directed to enforce the provisions of this code. The *Code Enforcement Officer* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

105.2 Inspections.

The *Code Enforcement Officer* or his/her designee shall make all of the required inspections, and that the CEO may also accept reports from other City Departments in appropriate circumstances. All reports of such inspections shall be in writing. The *Code Enforcement Officer* is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the City Manager

105.3 Right of entry.

Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the *Code Enforcement Officer* has reasonable cause to believe that there exists in a *structure* or upon a *premises* a condition in violation of this code, the *Code Enforcement Officer* is authorized to enter the structure or *premises* at reasonable times to inspect or perform the duties imposed by this code, provided that if such *structure* or *premises* is occupied the *Code Enforcement Officer* shall present credentials to the *occupant* and request entry. If such structure or *premises* is unoccupied, the *Code Enforcement Officer* shall first make a reasonable effort to locate the *owner* or other person having charge or control of the *structure* or *premises* and request entry. If entry is refused, the *Code Enforcement Officer* shall have recourse to the remedies provided by law to secure entry.

105.4 Identification.

The *Code Enforcement Officer* shall carry proper identification when inspecting *structures* or *premises* in the performance of duties under this code.

105.5 Notices and orders.

The *Code Enforcement Officer* shall issue all necessary notices or orders to ensure compliance with this code.

105.6 Department records.

The *Code Enforcement Officer* shall keep official records of all business and activities of the

department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.

SECTION 106 APPROVAL

106.1 Modifications.

Whenever there are practical difficulties involved in carrying out the provisions of this code, the *Code Enforcement Officer* shall have the authority to grant modifications for individual cases upon application of the *owner* or *owner's* representative, provided the *Code Enforcement Officer* shall first find the special individual reason that makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

106.2 Alternative materials, methods and equipment.

The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been *approved*. An alternative material or method of construction shall be *approved* where the *Code Enforcement Officer* finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

106.3 Required testing.

Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the *Code Enforcement Officer* shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

106.3.1 Test methods.

Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the *Code Enforcement Officer* shall be permitted to approve appropriate testing procedures performed by an *approved* agency.

106.3.2 Test reports.

Reports of tests shall be retained by the *Code Enforcement Officer* for the period required for retention of public records.

106.4 Used material and equipment.

The use of used materials which meet the requirements of this code for new materials is permitted. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working

condition.

106.5 Research reports.

Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from *approved* sources.

SECTION 107 VIOLATIONS

107.1 Unlawful acts.

It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

107.2 Notice of violation.

The *Code Enforcement Officer* shall serve a notice of violation or order in accordance with Section 108.

107.3 Prosecution of violation.

Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed to be in violation of this Ordinance. If the notice of violation is not complied with, the *Code Enforcement Officer* shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful *occupancy* of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the Code Enforcement Officer on such *premises* as authorized by this Ordinance shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

107.4 Violation penalties.

Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. The penalty for a violation of this ordinance shall be a minimum of \$100 to a maximum of \$2,500. Each day that the violation continues is a new violation.

107.5 Abatement of violation.

The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal *occupancy* of a building, structure or *premises*, or to stop an illegal act, conduct, business or utilization of the building, structure or *premises*.

SECTION 108 NOTICES AND ORDERS

108.1 Notice to person responsible.

Whenever the *Code Enforcement Officer* determines that there has been a violation of this code

or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 108.2 and 108.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 109.3.

108.2 Form.

Such notice prescribed in Section 108.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the *dwelling unit* or structure into compliance with the provisions of this code.
5. Inform the property *owner* of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 107.3.

108.3 Method of service.

Such notice shall be deemed to be properly served if a copy thereof is:

1. A copy of the notice left at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

108.4 Unauthorized tampering.

Signs, tags or seals posted or affixed by the *Code Enforcement Officer* shall not be mutilated, destroyed or tampered with, or removed without authorization from the *Code Enforcement Officer*.

108.5 Penalties.

Penalties for noncompliance with orders and notices shall be as set forth in Section 107.4.

108.6 Transfer of ownership.

It shall be unlawful for the *owner* of any *dwelling unit* or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such *dwelling unit* or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such *owner* shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the *Code Enforcement Officer* and shall furnish to the *Code Enforcement Officer* a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation. The new owner shall have the right to continue an appeal timely commenced by the prior owner or to commence an appeal in the new owner's name, provided the time within which to appeal has not expired.

SECTION 109 UNSAFE STRUCTURES AND EQUIPMENT

109.1 General.

When a structure or equipment is found by the *Code Enforcement Officer* to be unsafe, or when a structure is found unfit for human *occupancy*, or is found unlawful, such structure shall be *condemned* pursuant to the provisions of this code.

109. 1.1 Unsafe structures.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the *occupants* of the structure by not providing minimum safeguards to protect or warn *occupants* in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

109.1.2 Unsafe equipment.

Unsafe equipment is any equipment or system on the *premises* that is in such disrepair or condition that it is a hazard to life, health, property or safety of the public or *occupants* of the *premises* or structure. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other such equipment.

109.1.3 Structure unfit for human occupancy.

A structure is unfit for human *occupancy* whenever the *Code Enforcement Officer* finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks *ventilation*, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the *occupants* of the structure or to the public.

109.1.4 Unlawful structure.

An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

109.1.5 Dangerous structure or premises.

For the purpose of this code, any structure or *premises* that have any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the *approved* building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.

3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, *deterioration, neglect*, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become *detached* or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so *anchored*, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.
5. The building or structure, or part of the building or structure, because of dilapidation, *deterioration*, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and *occupancy*.
7. The building or structure is *neglected*, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the *approved* building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, *ventilation*, mechanical or plumbing system, or otherwise, is determined by the *Code Enforcement Officer* to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the *Code Enforcement Officer* to be a threat to life or health.
11. Any portion of a building that remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

109.2 Closing of vacant structures.

If the structure is vacant or unfit for human habitation and *occupancy*, and is not in danger of structural collapse, the *Code Enforcement Officer* is authorized to post a placard of condemnation on the *premises* and order the structure closed up so as not to be an attractive nuisance. Upon failure of the *owner* to close up the *premises* within the time specified in the

order, the *Code Enforcement Officer* shall cause the *premises* to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

109.3 Notice.

Whenever the *Code Enforcement Officer* has *condemned* a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the *owner* or the person or persons responsible for the structure or equipment in accordance with Section 108.3. If the notice pertains to equipment, it shall also be placed on the *condemned* equipment. The notice shall be in the form prescribed in Section 108.2.

109.4 Placarding.

Upon failure of the *owner* or person responsible to comply with the notice provisions within the time given, the *Code Enforcement Officer* shall post on the *premises* or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the *premises*, operating the equipment or removing the placard.

109.4.1 Placard removal.

The *Code Enforcement Officer* shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the *Code Enforcement Officer* shall be subject to the penalties provided by this code.

109.5 Prohibited occupancy.

Any occupied structure *condemned* and placarded by the *Code Enforcement Officer* shall be vacated as ordered by the *Code Enforcement Officer*. Any person who shall occupy a placarded *premise* or shall operate placarded equipment, and any *owner* or any person responsible for the *premises* who shall let anyone occupy a placarded *premise* or operate placarded equipment shall be liable for the penalties provided by this code.

109.6 Abatement methods.

The *owner*, *operator* or *occupant* of a building, *premises* or equipment deemed unsafe by the *Code Enforcement Officer* shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other *approved* corrective action.

109.7 Record.

The *Code Enforcement Officer* shall cause a report to be filed on an unsafe condition. The report shall state the *occupancy* of the structure and the nature of the unsafe condition.

SECTION 110 EMERGENCY MEASURES

110.1 Imminent dangers.

When, in the opinion of the *Code Enforcement Officer*, there is *imminent danger* of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building *occupants* or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the *Code Enforcement Officer* is hereby authorized and empowered to order and require the *occupants* to vacate the *premises* forthwith. The *Code Enforcement Officer* shall cause to be posted at each entrance to such structure a notice reading as follows: "This *Structure* Is Unsafe and Its *Occupancy* Has Been Prohibited by the *Code Enforcement Officer*." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

110.2 Temporary safeguards.

Notwithstanding other provisions of this code, whenever, in the opinion of the *Code Enforcement Officer*, there is *imminent danger* due to an unsafe condition, the *Code Enforcement Officer* shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the *Code Enforcement Officer* deems necessary to meet such emergency.

110.3 Emergency repairs.

For the purposes of this section, the *Code Enforcement Officer* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

110.4 Costs of emergency repairs.

Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the *owner* of the *premises* where the unsafe structure is or was located for the recovery of such costs.

110.5 Hearing.

Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code

SECTION 111 DEMOLITION

111.1 General.

The *Code Enforcement Officer* shall order the *owner* of any *premises* upon which is located any structure, which in the *Code Enforcement Officer* judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by

repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the *Code Enforcement Officer* shall order the *owner* to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless *approved* by the building official.

SECTION 112 MEANS OF APPEAL

Appeals shall be made in accordance with Article 13 of the City of Ellsworth Unified Development Ordinance

SECTION 201 MAINTENANCE OF STRUCTURES, EQUIPMENT AND *EXTERIOR PROPERTY*

201.1 Scope.

The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and *exterior property*.

201.2 Responsibility.

The *owner* of the *premises* shall maintain the structures and *exterior property* in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy *premises* which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. *Occupants* of a *dwelling unit, rooming unit* or *housekeeping unit* are responsible for keeping in a clean, sanitary and safe condition that part of the *dwelling unit, rooming unit, housekeeping unit* or *premises* which they occupy and control.

201.3 Vacant structures and land.

All vacant structures and *premises* thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

SECTION 301 EXTERIOR PROPERTY AREAS

301.1 Sanitation.

All *exterior property* and *premises* shall be maintained in a clean, safe and sanitary condition. The *occupant* shall keep that part of the *exterior property* which such *occupant* occupies or controls in a clean and sanitary condition.

301.2 Sidewalks and driveways.

All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

301.3 Weeds.

All Commercial, Vacant, Foreclosed or Abandoned premises and *exterior property* that is normally maintained, shall be maintained free from weeds or plant growth in excess of 8 inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this section shall not include cultivated flowers, gardens, agricultural areas or fields.

Upon failure of the *owner* or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 107.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the *owner* or agent responsible for the property.

301.4 Accessory structures.

All accessory structures, including *detached* garages, fences and walls, shall be maintained structurally sound and in good repair.

301.5 Motor vehicles.

Refer to State Statutes & City of Ellsworth Unified Development Ordinance.

301.6 Defacement of property.

No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

It shall be the responsibility of the *owner* to restore said surface to an *approved* state of maintenance and repair.

SECTION 302 SWIMMING POOLS, SPAS AND HOT TUBS

302.1 Swimming pools.

Refer to MUBEC & Maine State Uniform Plumbing Code.

SECTION 303 EXTERIOR STRUCTURE

303.1 General.

The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare. Please refer to MUBEC (Maine Uniform Building & Energy Code).

303.2 Roofs and drainage.

The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or *deterioration* in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

303.3 Overhang extensions.

All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly *anchored* so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

303.4 Stairways, decks, porches and balconies.

Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

303.5 Chimneys and towers.

All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

303.6 Handrails and guards.

Every handrail and *guard* shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

303.7 Window, skylight and door frames.

Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

303.7.1 Glazing.

All glazing materials shall be maintained free from cracks and holes.

303.7.2 Openable windows.

Every window, other than a fixed window, shall be easily opened able and capable of being held in position by window hardware.

303.8 Doors.

All exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door.

303.9 Basement hatchways.

Every *basement* hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

303.10 Building security.

Doors, windows or hatchways for *dwelling units*, room units or *housekeeping units* shall be provided with devices designed to provide security for the *occupants* and property within.

303.10.1 Doors.

Doors providing access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily opened from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a minimum lock throw of 1 inch (25 mm). Such deadbolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock.

303.10.2 Windows.

Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with a window sash locking device.

303.10.3 Basement hatchways.

Basement hatchways that provide access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

SECTION 304 INTERIOR STRUCTURE

304.1 General.

The interior of all rental structures and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. *Occupants* shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every *owner* of a structure containing a *rooming house*, *housekeeping units*, a hotel, a dormitory, two or more *dwelling units* or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and *exterior property*.

304.2 Interior surfaces.

All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected. All removal of Lead Paint and/or Asbestos will be in compliance with State of Maine Statutes/Guidelines.

304.3 Stairs and walking surfaces.

Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

304.4 Handrails and guards.

Every handrail and *guard* shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

304.5 Interior doors.

Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

SECTION 305 RUBBISH AND GARBAGE

305.1 Accumulation of rubbish or garbage.

All *exterior property* and *premises*, and the interior of every structure, shall be free from any accumulation of *rubbish* or garbage.

SECTION 401 Light & Ventilation

401.1 Scope.

The provisions of this chapter shall govern the minimum conditions and standards for light, *ventilation* and space for occupying a structure.

401.2 Responsibility.

The *owner* of the structure shall provide and maintain light, *ventilation* and space conditions in compliance with these requirements. A person shall not occupy as *owner-occupant*, or permit

another person to occupy, any *premises* that do not comply with the requirements of this chapter.

401.3 Alternative devices.

In lieu of the means for natural light and *ventilation* herein prescribed, artificial light or mechanical *ventilation* complying with the *MUBEC* shall be permitted.

SECTION 402 LIGHTING REQUIRMENTS

402.1 Common halls and stairways.

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be able to be illuminated at all times with a light bulb/ lamp that will produce at least 600 lumens of light for each 200 square feet (19 m²) of floor area, provided that the spacing between lights shall not be greater than 30 feet (9144 mm).

402.3 Other spaces.

All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe *occupancy* of the space and utilization of the appliances, equipment and fixtures.

SECTION 403 OCCUPANCY LIMITATIONS

403.1 Privacy.

Dwelling units, hotel units, *housekeeping units*, *rooming units* and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

403.2 Minimum room widths.

A habitable room, other than a kitchen, shall be a minimum of 7 feet (2134 mm) in any plan dimension. Kitchens shall have a minimum clear passageway of 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

403.3 Minimum ceiling heights.

Habitable spaces, hallways, corridors, laundry areas, *bathrooms*, *toilet rooms* and habitable *basement* areas shall have a minimum clear ceiling height of 7 feet (2134 mm).

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced a minimum of 4 feet (1219 mm) on center and projecting a maximum of 6 inches (152 mm) below the required ceiling height.
2. *Basement* rooms in one- and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a minimum ceiling height of 6 feet 8 inches (2033 mm) with a minimum clear height of 6 feet 4 inches (1932 mm) under beams, girders, ducts and similar obstructions.

3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a minimum clear ceiling height of 7 feet (2134 mm) over a minimum of one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a minimum clear ceiling height of 5 feet (1524 mm) shall be included.

403.4 Bedroom and living room requirements.

Every *bedroom* and living room shall comply with the requirements of Sections 403.4.1 through 403.4.5.

403.4.1 Room area.

Every living room shall contain at least 120 square feet (11.2 m²) and every bedroom shall contain a minimum of 70 square feet (6.5 m²) and every bedroom occupied by more than one person shall contain a minimum of 50 square feet (4.6 m²) of floor area for each occupant thereof.

403.4.2 Access from bedrooms.

Bedrooms shall not constitute the only means of access to other *bedrooms* or *habitable spaces* and shall not serve as the only means of egress from other *habitable spaces*.

Exception: Units that contain fewer than two *bedrooms*.

403.4.3 Water closet accessibility.

Every *bedroom* shall have access to at least one water closet and one lavatory without passing through another *bedroom*. Every *bedroom* in a *dwelling unit* shall have access to at least one water closet and lavatory located in the same story as the *bedroom* or an adjacent story.

403.4.4 Prohibited occupancy.

Kitchens and non-habitable spaces shall not be used for sleeping purposes.

403.5 Overcrowding.

Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 403.5.

TABLE 403.5 MINIMUM AREA REQUIREMENTS

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
Living room ^{a, b}	120	120	150

Dining room ^{a, b}	No requirement	80	100
Bedrooms	Shall comply with <u>Section 403.4.1</u>		

SECTION 501 GENERAL

501.1 Scope.

The provisions of this chapter shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

501.2 Responsibility.

The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter.

SECTION 502 REQUIRED FACILITIES

502.1 Dwelling units.

Every *dwelling unit* shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

502.2 Rooming houses.

At least one water closet, lavatory and bathtub or shower shall be supplied for each four *rooming units*.

502.3 Hotels.

Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten *occupants*.

502.4 Employees' facilities.

A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

502.4.1 Drinking facilities.

Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or

disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in *toilet rooms* or *bathrooms*.

502.5 Public toilet facilities.

Public toilet facilities shall be maintained in a safe sanitary and working condition in accordance with the *International Plumbing Code*. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during *occupancy* of the *premises*.

SECTION 503 PLUMBING SYSTEMS AND FIXTURES

Refer to the Maine Uniform Plumbing Code

SECTION 504 WATER SYSTEM

Refer to the Maine Uniform Plumbing Code

SECTION 505 SANITARY DRAINAGE SYSTEMS

Refer to the Maine Subsurface Wastewater Disposal Rules

SECTION 506 STORM DRAINAGE

506.1 STORMWATER DISCHARGE

Drainage of roofs and paved areas, *yards* and courts, and other open areas on the *premises* shall not be discharged in a manner that creates a public nuisance.

SECTION 601 MECHANICAL & ELECTRICAL

601.1 Scope.

The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility.

The *owner* of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any *premises* which does not comply with the requirements of this chapter.

SECTION 702 HEATING FACILITIES

702.1 Facilities required.

Heating facilities shall be provided in structures as required by this section.

702.2 Residential occupancies.

Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms* based on the winter outdoor design temperature for the locality indicated in Appendix D of the *International Plumbing Code*. Cooking appliances shall not be used, nor shall portable unvented fuel-burning space heaters be used, as a means to provide required heating.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

702.3 Heat supply.

Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from September 1st to May 1st to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

A101 APPENDIX

A101.1 SECURING BUILDINGS

All windows and doors shall be boarded in an *approved* manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102 MATERIALS

A102.1 Boarding sheet material.

Boarding sheet material shall be minimum $\frac{1}{2}$ -inch (12.7 mm) thick wood structural panels complying with the *MUBEC*.

A102.2 Boarding framing material.

Boarding framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102 mm) solid sawn lumber complying with the *MUBEC*.

A102.3 Boarding fasteners.

Boarding fasteners shall be minimum $\frac{3}{8}$ -inch (9.5 mm) diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *MUBEC*.

A103 INSTALLATION

A103.1 Boarding installation.

The boarding installation shall be in accordance with Figures A103.1(1) and A103.1(2) and Sections A103.2 through A103.5.

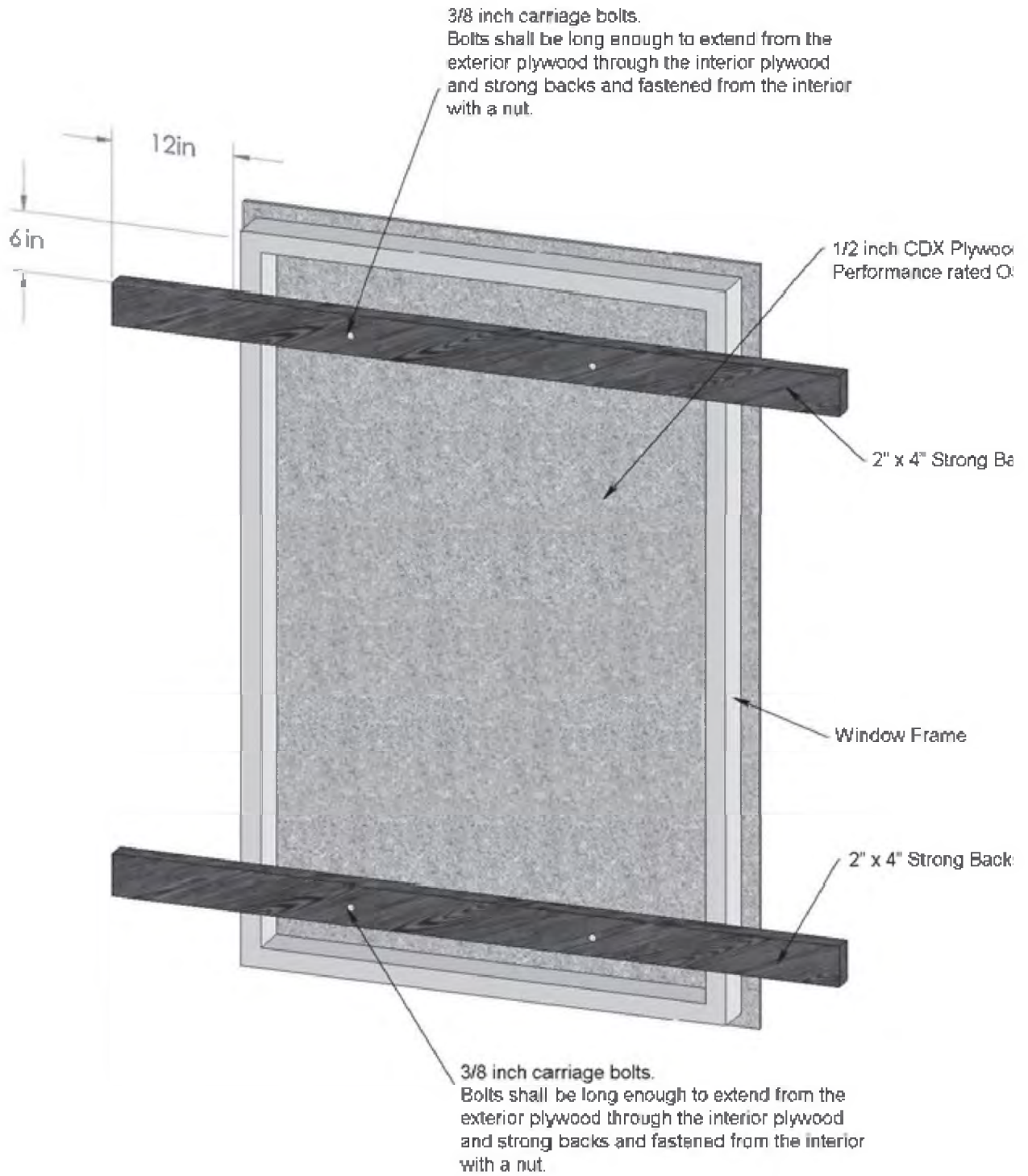


FIGURE A103.1 (1) BOARDING OF DOOR OR WINDOW

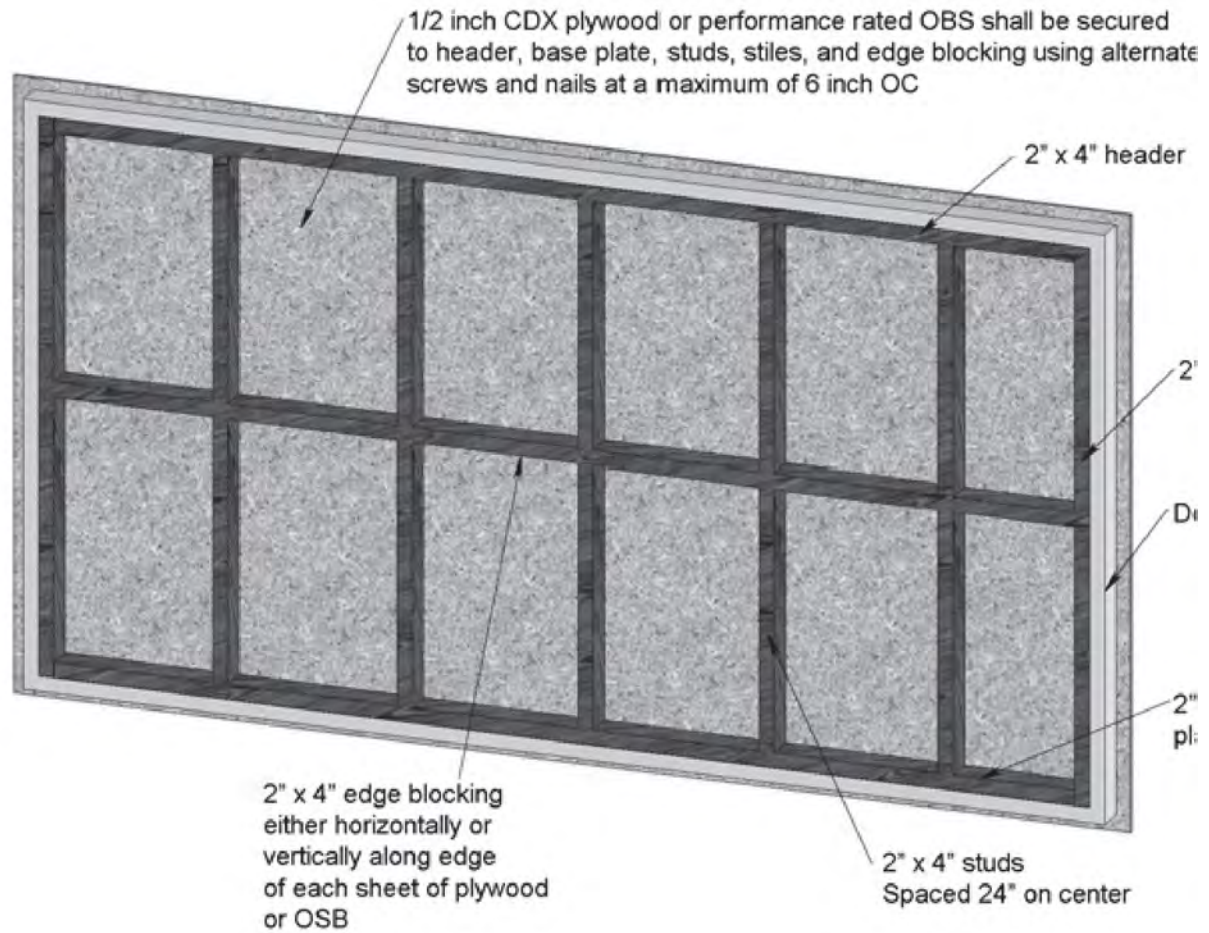


FIGURE A103.1 (2) BOARDING OF DOOR WALL

A103.2 Boarding sheet material.

The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.3 Windows.

The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The 2-inch by 4-inch (51 mm by 102 mm) strong back framing material shall be cut minimum 2 inches (51 mm) wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the bottom and below the top of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.4 Door walls.

The door opening shall be framed with minimum 2-inch by 4-inch (51 mm by 102 mm) framing material secured at the entire perimeter and vertical members at a maximum of 24 inches (610 mm) on center. Blocking shall also be secured at a maximum of 48 inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches (152 mm) on center.

A103.5 Doors.

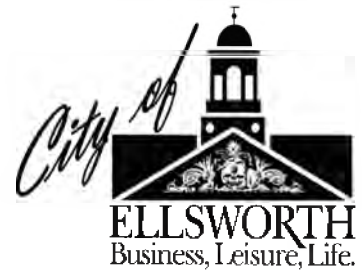
Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an *approved* manner.

RECREATIONAL MARIJUANA PROHIBITION ORDINANCE

*Enacted and effective on the 19th day of December 2016.
Automatically expires two (2) years after the effective date
unless it is repealed or reauthorized by the City Council.*

Attest:

City Clerk
Heidi-Noel Grindle



RECREATIONAL MARIJUANA PROHIBITION ORDINANCE

- Section 1. Title.** This ordinance shall be known and cited as the “Recreational Marijuana Prohibition Ordinance” of the City of Ellsworth.
- Section 2. Authority.** The ordinance is adopted pursuant to the Title 30-A M.R.S. §3001 and Title 7 M.R.S. c. 417.
- Section 3. Purpose and Intent.** The purpose of this ordinance is to impose a ban on the operation of Retail Marijuana Establishments and Retail Marijuana Social Clubs in the City of Ellsworth to protect the health, safety, and welfare of the people of Ellsworth as these activities constitute a nuisance.
- Section 4. Prohibition.** The operation of Retail Marijuana Establishments which includes Retail Marijuana Stores, Retail Marijuana Cultivation Facilities, Retail Marijuana Products Manufacturing Facilities, and Retail Marijuana Testing Facilities; and the operation of Retail Marijuana Social Clubs are prohibited within the City of Ellsworth, and therefore all activities related to the abovementioned retail uses such as, but not limited to, cultivation, possession, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring, and distributing are expressly prohibited within the City of Ellsworth.
- Section 5. Exemptions.**
- A. Personal Use of Marijuana. This ordinance shall not be construed to prohibit the Personal Use of Marijuana per Title 7 M.R.S. c. 417 section 2452.
 - B. Medical Use of Marijuana. This ordinance shall not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Use of Marijuana Act and the City of the Ellsworth Code of Ordinances, c. 56 Unified Development Ordinance.
- Section 6. Effective Date.** This ordinance enacted on the 19th day of December 2016 by the Ellsworth City Council shall take effect immediately.

- Section 7. Sunset Provision.** This ordinance automatically expires two (2) years after the effective date unless it is repealed or reauthorized by the City Council.
- Section 8. Relationship with Other Ordinances.** Whenever a provision of this ordinance is inconsistent with another provision of any other ordinance, regulation, or statute, the more restrictive provision shall control.
- Section 9. Validity and Severability.** Should any section or provision of this ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of this ordinance.
- Section 10. Enforcement.**
- A.** Any duly designated Ellsworth Police Officer is authorized and shall have the authority to enforce all provisions of this ordinance.
 - B.** The City Manager is authorized to order that legal action be taken to enforce the provisions of this Ordinance.
- Section 11. Cease Operations Order.**
A Police Officer may issue a written cease operations order directing the occupancy, use, and other activities prohibited under this ordinance to cease immediately, and that the premises be vacated. Upon notice of the cease operations order, all occupancy, use, or other activity subject to the cease operations order shall stop immediately and the premises shall be vacated and closed.
- Section 12. Penalty.** Any person violating the provisions of this ordinance may be liable for the penalties set forth below:
- A. Civil Penalties.**
- i. First Violation.** The maximum penalty for undertaking an activity related to Retail Marijuana Establishments or Retail Marijuana Social Clubs is \$2,500.
 - ii. Multiple.** The maximum penalty for undertaking an activity related to Retail Marijuana Establishments or Retail Marijuana Social Clubs is \$25,000 when it is shown that there has been a previous conviction of the same person within the past five (5) years for a violation of the ordinance.
 - iii. Economic Benefit.** The maximum penalty may be increased if the economic benefit resulting from the violation exceeds the applicable penalties. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value

accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

- iv. **Setting of Penalty.** In setting a penalty, the following shall be considered:
 - a. Prior violations by the same party;
 - b. The impact caused and/or potential impact posed by the operation of the prohibited activity to the health, safety, and welfare of the people of Ellsworth.
 - c. The damage that cannot be abated or corrected; and
 - d. The extent to which the violation continued following an order to stop.

B. Abatement and Mitigation. The violator may be ordered to correct, abate or mitigate the violations.

C. Damaged Incurred. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss, or damage incurred by the City by reason of such violation.

D. Attorney Fees. If Ellsworth is the prevailing party, the City must be awarded reasonable attorney fees, expert witness fees and costs.

Section 13. Definitions. The definitions below are per Title 7 M.R.S. c. 417, section 2442.

Marijuana: Means cannabis.

Extraction: The process of extracting marijuana with solvents or gases.

Person: A natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

Retail Marijuana: Cannabis that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment or retail marijuana social club.

Retail Marijuana Cultivation Facility: An entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

Retail Marijuana Establishment: Retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

Retail Marijuana Product: Concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

Retail Marijuana Products Manufacturing Facility: An entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

Retail Marijuana Social Club: An entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

Retail Marijuana Store: An entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

Retail Marijuana Testing Facility: An entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

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