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## Town of Southwest Harbor Maine Ordinances

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**BOARD OF APPEALS ORDINANCE  
FOR THE TOWN OF SOUTHWEST HARBOR**

Approved 05/08/90  
Amended through 5/05/09  
Amended through May 03, 2011

Attest a True Copy

  
\_\_\_\_\_  
Beatrice D. Grinnell, Town Clerk

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## **SECTION I: GENERAL PROVISIONS**

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances, and the procedures adopted by the Board in its Bylaws.
- B. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the Town which it may be expected to act upon as well as with the applicable State statutes.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Southwest Harbor comprehensive Plan, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.
- D. The person filing the appeal has the burden of proof.
- E. Application fees shall be set by recommendation of the Board of Appeals and approval of the Southwest Harbor Board of Selectmen

## **SECTION II: APPOINTMENTS**

- A. The Board shall consist of five (5) regular members and (2) two alternate members, appointed by the Selectmen of the Town of Southwest Harbor for terms of three (3) years. These terms shall be staggered so as to preserve continuity on the Board and shall expire on June 30<sup>th</sup>.
- B. Neither a Selectman nor his/her spouse may be a member of the Board.
- C. Any member of the Board may be removed from the Board, for cause, by the Selectmen before expiration of his/her term, but only after notice and an opportunity for a hearing at which time the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings without prior notification, or failure to attend at least 50% of all meetings during the preceding twelve (12) month period, or voting when the member has a "conflict of interest".

## **SECTION III: OFFICERS AND DUTIES**

- A. The officers of the Board shall consist of a Chairperson, Acting Chairperson and Secretary, who shall be elected annually by a majority of the Board, and shall serve until their successors are elected.
- B. CHAIRPERSON. The Chairperson shall perform all duties required by law and the Bylaws and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order and procedure, and shall take such other actions as necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board.
- C. ACTING CHAIRPERSON. The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.
- D. SECRETARY. The Secretary, subject to the direction of the Board, and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such a fact. The Chairperson and/or Secretary shall also arrange for proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a Secretary. All records are public and may be inspected at reasonable times.

## **SECTION IV: CONFLICT OF INTEREST**

Any question whether a particular issue involves a 'conflict of interest' sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

The term 'conflict of interest' shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., grandfather, father, wife, son, grandson) or to his employer or the employer of any member of the person's immediate family.

## **SECTION V: POWERS AND LIMITATIONS**

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

- A. The Board may interpret the provisions of any applicable Town Ordinance which are called into question.
- B. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable Town Ordinance.
- C. Except as provided in sub-section D below, the Board may grant a variance only where strict application of any applicable Town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
  1. That the land in question can not yield a reasonable return unless a variance is granted;
  2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
  3. That the granting of a variance will not alter the essential character of the locality, and
  4. The hardship is not a result of action taken by the applicant or prior owner.
- D. Variance
  1. **Disability Variance**

The Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under M.R.S.A 5 § 4553. 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.
  2. **Setback Variance**

The Board may grant a setback variance to a property owner of a single family dwelling where the Board finds that strict application of the zoning

ordinance would cause “undue hardship” as defined in M.R.S.A 30-A § 4353(4-B):

- a. the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - b. the granting of a variance will not alter the essential character of the locality;
  - c. the hardship is not the result of action taken by the applicant or a prior owner.
  - d. the granting of the variance will not substantially reduce or impair the use of the abutting property; and
  - e. that the granting of the variance is based upon demonstrated need, not convenience, and not other feasible alternative is available.
  - f. Additional limitations upon this variance request are:
    1. The dwelling for which the variance is sought must be the primary year- round residence of the applicant.
    2. The variance may not exceed 20% of the required setback.
    3. The variance shall not allow a reduction in the shoreline setback, and
    4. The variance may not cause the area of the dwelling to exceed the maximum permissible lot coverage.
- E. The Board shall have the power to hear and decide, using an appellate review standard, and not using the *de novo* review standard, all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit variance or other required approval, or any application therefore, including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit variance or other approval (hereinafter a “Decision”) where it is alleged that there is an error in any order, requirement, decision, or determination made by or failure to act by:
- a. The Planning Board pursuant to the Land Use Ordinance;
  - b. the Selectmen pursuant to the Special Amusement Permit Ordinance or Title 28-A M.R.S.A. §1054 (also relating thereto);
  - c. the Selectmen or the Road Commissioner pursuant to the Road Ordinance;
  - d. the Planning Board pursuant to the Floodplain Management Ordinance;
  - e.. the Selectmen pursuant to the Policy on Warning Sign Requests;
  - f. the Selectmen pursuant to the Road Opening Permit Ordinance;
  - g. the Town Manager (or other designated Hearing Officer) or the Selectmen pursuant to Section 14 of the Town Personnel Rules and Regulations relating to grievances with respect to Town employees and officers.
- F. The Board shall have the power to hear and decide, using a *de novo* standard, and not using an appellate standard, all appeals by any person where it is alleged that there is an error in any decision, or determination made by or failure to act by:
- a. the Selectmen or the Assessor pursuant to M.R.S.A. 36 § 841 *et seq.* (relating to the abatement of taxes);
  - b. the Code Enforcement Officer pursuant to the Land Use Ordinance.
  - c. the Code Enforcement Officer pursuant to the Flood Plain Management Ordinance.
  - d. Plumbing Inspector pursuant to the Maine State Plumbing Code.
  - e. The Harbormaster pursuant to the Coastal Waters and Harbor Ordinance
- G. The Board shall have the power to hear and decide, using a *de novo* review standard, and not using an appellate review standard:

- a. the issuance of a special exception permit or of a conditional use permit, as provided in sub-section B., above;
- b. the granting of an extension to the life of a building permit, as contemplated by SECTION VIII. (H)(3) of the Southwest Harbor Land Use Ordinance, and other similar situations described in other ordinances of the Town of Southwest Harbor where the Board of Appeals is required to make independent factual findings.

## **SECTION VI: MEETINGS**

1. The regular meeting of the Board shall be held each month if there is business to conduct.
2. The annual organizational meeting of the Board shall be the first regular meeting after the Annual Town Meeting.
3. Special meetings of the Board may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board and to the Town Manager.
4. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board which request shall specify the matters to be considered at such special meeting.
5. Subject to the discretion of the Chairperson, the order of business at regular meetings of the Board shall be as follows:
  - a. Roll Call
  - b. Reading and approval of the minutes of the preceding meeting
  - c. action on held cases
  - d. public hearing (when scheduled)
  - e. other business
  - f. adjournment
6. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. Deliberations may be conducted in executive session on the following matters and not others (as defined by M.R.S.A 1 § 405):
  - a. consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage; and
  - b. discussion or consideration of the appointment, duties, disciplining, resignation or dismissal of a Board member.

## **SECTION VII: VOTING**

1. A majority of the full voting membership of the Board shall constitute a Quorum for the purpose of deciding an appeal.
2. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.
3. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members present and no less than three (3) affirmative votes. In the absence of three (3) affirmative votes, the meeting shall be continued.

4. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
5. No member shall vote on the determination of any matter requiring public hearing unless he/she has attended the public hearing thereon or unless he/she has familiarized him/herself with such matter by studying the record.

#### **SECTION VIII: APPEAL PROCEDURE**

1. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V of this Ordinance must file such application for appeal in writing on forms provided, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the Town Clerk, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.
2. The fee to accompany applications for appeal shall be listed on the application. Checks are to be made payable to the Town of Southwest Harbor.

#### **SECTION IX: HEARING**

- A. The Board shall hold a hearing within a responsible time and shall schedule said Public Hearing on all completed appeal applications within forty-five (45) days of the filing of a completed appeal application. The Chairman shall determine completeness.
- B. The Board shall cause notice of the date, time and place of such hearings, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published once in a newspaper of general circulation in the Town, the date of the publication to be at least ten (10) days prior to the Hearing. The Board shall also cause notice of the hearing to be given to the Town. Except for appeals related to the abatement of taxes, the Board shall cause notice of the hearing to be given to the owners of property abutting that for which the appeal is taken at least ten (10) days prior to the date of the Hearing. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals
- C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at a public hearing shall consist of the following rules:
  1. The Chairperson calls the Hearing to order.
  2. The Chairperson determines whether there is a quorum
  3. The Chairperson gives a statement of the case and reads all correspondence and reports received.
  4. The Board determines whether it has jurisdiction over the Appeal.
  5. The Board decides whether the applicant has "standing" before the Board.
  6. The Board determines which individuals attending the Hearing are "interested parties". "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include but are not limited to abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their



- appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the Hearing. Municipal officers, the Planning Board and the Code Enforcement Officer shall automatically be made parties to the proceeding.
7. Other persons attending the hearing and Federal, State, Town and other governmental agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chairperson.
  8. The appellant is given the opportunity to present his or her case without interruption.
  9. The Board, and “interested parties” may ask questions of the appellant through the Chairperson.
  10. The “interested parties” are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
  11. The appellant may ask questions of the “interested parties” and Board witnesses through the Chairperson, or directly, with the permission of the Chairperson.
  12. All parties are given the opportunity to refute or rebut statements made throughout the Hearing.
  13. The chairperson shall receive comments and questions from all observers and interested citizens who wish to express their views.
  14. The hearing is closed after all parties have been heard. If additional time is needed, the Hearing may be continued to a later date. All participants shall be notified of the date, time and place of the continued Hearing.
  15. Written testimony may be accepted by the Board for seven days after the close of the Hearing.
- E. The Board may waive any of the above rules or change the order of business if good cause is shown.

## **SECTION X. DECISIONS**

- A. The Board shall decide all administrative appeals and variance appeals within thirty (30) days from the date of the final Hearing and shall issued a written decision on all appeals.
- B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the Board, and the exhibits, together with all papers and requests filed in the proceedings, shall constitute the public record.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable State Laws, Local Ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a “de novo” hearing which allows the Board to receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When acting in an appellate capacity, the Board of Appeals may reverse the decision of the Planning Board, or other applicable administrative board, but only upon a finding that the decision was contrary to specific provisions of the Ordinance under review before the Planning Board, or other applicable administrative board, or contrary to the facts presented to the Planning

Board, or other applicable administrative board. Alternatively, the Board of Appeals may remand the matter to the Planning Board, or other applicable administrative board for further consideration.

- F. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant within seven (7) days of the Board's decision. Any decisions affecting the Shoreland Zone shall be mailed or hand-delivered to the Department of Environmental Protection within seven (7) days. Copies of written decision of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer and the municipal officers.
- G. Decisions of the Board shall be filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- H. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen(14) days of the decision.
- I.. Variances granted must be recorded by certificate in the Hancock County Registry of Deeds within ninety (90) days of final approval as allowed in M.R.S.A. 30-A §4353. (Variances not recorded within this time shall be invalid.) The certificate must be prepared in recordable form and provided to the applicant. It must indicate the name of the current property owner, identify the property by reference to the last recorded owner, identify the property by reference to the last recorded deed or deeds of ownership in its chain of title, and indicate the fact that a variance including any conditions on the variance, has been granted and the date of the granting.
- J.. Unless otherwise specified, any order of decision of the Board for a permitted use shall expire if building permit for the use is not obtained by the applicant within One Hundred Eighty (180) days from the date of the decision; however, the Board may extend this time an additional One Hundred Eighty (180) days upon written request from the appellant within the original One Hundred (180) day period.

## **SECTION XI. RECONSIDERATION**

In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change is its original decision within forty five (45) days of the date of the vote on the original decision. A request to the Board to reconsider a decision must be filed within ten (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 forty-five (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 (fifteen) 15 days after the decision on reconsideration.

## **SECTION XII. APPEAL TO SUPERIOR COURT**

The decision of the Board of Appeals may be taken, within forty-five (45) days of the date of the vote on the original decision, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown.

## **SECTION XIII. SEVERABILITY**

The invalidity of any Section or provision of this Ordinance shall not be held to invalidate any other section or provision within the Ordinance.

## **SECTION XIV. AMENDING THE ORDINANCE**

- A. This Ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting.
- B. Any proposed amendment to the Ordinance shall be presented at a public hearing before the town meeting. The Board of Selectmen may hold a public hearing on the proposed amendments to the Ordinance and report in writing its opinion on the desirability of the proposed change(s).
  - 1. If the vote on the amendment is by local referendum ballot, the Selectmen shall have a public hearing at least 60 days prior to the Town Meeting. If the amendment is at an open assembly town meeting, a public hearing must be held within thirty (30) days of the duly authorized town meeting.
  - 2. Notice of any public hearing on an amendment to this Ordinance shall be given in a newspaper with local circulation at least five (5) days before the hearing.

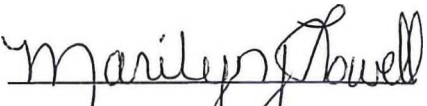


**TOWN OF SOUTHWEST HARBOR**

**CONSUMER FIREWORKS ORDINANCE  
TO PROHIBIT THE SALE AND USE OF CONSUMER FIREWORKS**

**Approved 05/03/2016**

**Attest a true copy**

  
Marilyn J. Lowell, Town Clerk





# **Consumer Fireworks Ordinance to Prohibit the Sale and Use of Consumer Fireworks**

## **SECTION I Purpose**

This Ordinance governs and prohibits the sale and use of "consumer fireworks" to ensure the safety of the residents and property owners of the Town of Southwest Harbor and of the general public.

## **SECTION II. Title and Authority**

This Ordinance shall be known as the "Town of Southwest Harbor consumer fireworks Ordinance." This Ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S. § 3001, and the provisions of 8 M.R.S. § 223-A (Sale of Consumer Fireworks).

## **SECTION III. Definitions**

The following words, terms and phrases, when used in this Ordinance shall have the meanings ascribed to them in the section, except where the context clearly indicates a different meaning:

- A. Consumer fireworks. "Consumer fireworks" has the same meaning as in 8 M.R.S. § 221-A(1-A), as amended.
- B. Person. "Person" means any individual, combination of individuals, association, municipality, amusement park or other legal or commercial entity.
- C. Sale and Sell. "Sale" or "sell" means any transfer or delivery of consumer fireworks to a person for consideration.
- D. Town. "Town" means the Town of Southwest Harbor.

## **SECTION IV. Sale of Consumer Fireworks Prohibited**

No person or group of persons shall sell or offer for sale consumer fireworks within the Town of Southwest Harbor.



## **SECTION V. Use of Consumer Firework Prohibited**

No person or group of persons shall use, display, fire or cause to be exploded consumer fireworks within the Town of Southwest Harbor.

## **SECTION VI. Penalties and Enforcement**

- A. Penalty for Violation: Any person who violates the provisions of this Ordinance shall commit a civil violation punishable by a penalty of One Hundred Dollars (\$100.00). Each day such violation occurs or continues to occur shall constitute a separate violation.
- B. Enforcement: This Ordinance shall be enforced by the Town of Southwest Harbor Police Department, or by any other duly appointed agents of the Town.
- C. Injunction: In addition to any other remedies available at law or equity, the commission of acts prohibited by this Ordinance shall constitute a nuisance and the Town of Southwest Harbor, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance and to prohibit further and continued violation thereof.
- D. Seizure & Disposal of Consumer Fireworks: The Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit the seized consumer fireworks to the State for disposal.

## **SECTION VII. Exceptions**

This Ordinance does not apply to a person issued a fireworks display permit by the Town of Southwest Harbor and/or by the State of Maine pursuant to 8 M.R.S. § 227-A as may be amended from time to time.

## **SECTION VIII. Severability**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

## **SECTION IX. Effective Date**

The effective date of this Ordinance is: June 1, 2016.







## FLOODPLAIN MANAGEMENT ORDINANCE FOR THE TOWN OF SOUTHWEST HARBOR

Attest a true copy

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TOWN CLERK

Approved 5/07/91  
Amended 5/7/01  
Amended 5/5/09

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## SECTION I. PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Southwest Harbor are subject to periodic flooding, causing serious damage 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, in 1977 the Town of Southwest Harbor chose to become a participating community in the National Flood Insurance program, and agreed to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain management Ordinance.

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

The Town of Southwest Harbor 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 and 4401-4407.

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

The areas of special flood hazard, Zone A, AE and VE, are identified by FEMA in a report entitled "Flood Insurance Study – Town of Southwest Harbor, Maine, Hancock County." effective June 3, 1991, with accompanying 'Flood Insurance Rate Map', which are hereby adopted by reference and declared to be a part of this Ordinance.

The Flood Insurance Rate Map was revised by a Letter of Map Revision (LOMR) to reflect a decrease in the base (100-year) flood elevation (bfe) and a change in the Special Flood Hazard Area zone designation along the shoreline south of Clark Point. This revision became effective June 17<sup>th</sup>, 1992.

## SECTION II. PERMIT

- A. Before any construction or other development (as defined in SECTION XIII, DEFINITIONS, page 24) including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 1, a Flood Hazard Development Permit shall be obtained from the Planning Board or the CEO. This permit shall be in addition to any other permits which may be required pursuant to the Ordinance of the Town of Southwest Harbor.
- B. The application shall include:
1. the name, address and phone number of the applicant, owner and contractor;
  2. an address and a map indicating the location of the construction site;
  3. a site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
  4. a statement of the intended use of the structure and/or development;
  5. a statement of the cost of the development including all materials and labor;
  6. a statement as to the type of sewage system proposed, if any;
  7. specification of dimensions of the proposed structure and/or development;

### ITEMS 8 – 11 APPLY ONLY TO NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS

8. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:

- a. base flood at the proposed site of all new or substantially improved structures, which is determined:
    1. In Zones AE and VE from data contained in the “Flood Insurance Study – Town of Southwest Harbor”; or,
    2. In Zone A
      - a. from any base flood elevation data from federal, state or other technical sources (such as FEMA’s Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to SECTIONS IV.K. and VII.D.
      - b. from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto 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.
      - c. to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
  - b. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - c. lowest floor, including basement (state if such structures contain a basement); and
  - d. level, in the case of non-residential structures only, to which the structure will be flood-proofed.
9. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in SECTION IV.
  10. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate.
  11. The following certifications as required in Section IV by a registered professional engineer or architect:
    - a. A Flood-proofing Certificate (FEMA Form 81-65, 01/97, as amended), to verify that the flood-roofing methods for any non-residential structures will meet the flood-proofing criteria of B.8.d above, Section IV.G., and other applicable standards in Section IV;
    - b. A V-Zone Certificate to verify that the construction in coastal high hazard area VE will meet the criteria of Section IV.P. and other applicable standards in Section IV.
    - c. A Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section IV.L.2.a.;
    - d. a certified statement that bridges will meet the standards of Section IV.M.; and

- e. a certified statement that containment walls will meet the standards of Section IV.N.
  - 12. a description of the extent to which any water course will be altered or relocated as a result of the proposed development; and
  - 13. a statement of construction plans describing in detail how each applicable development standard in Section VI will be met.
- C. Review Authority:
- 1. The Code Enforcement Officer (CEO) shall review all applications except the following:
  - 2. The Planning Board shall review all other applications for subdivisions and other developments as defined in Section VII of this ordinance, as well as storage, lobster or fishing sheds located seaward of mean high tide.
  - 3. The CEO may request the advice and concurrence of the Planning Board on any application which raises unusual questions, and shall refer any application to the Board for decision, which in the CEO's judgment requires a Public Hearing or otherwise requires action by the Planning Board.
- D. Application Fee and Expert's Fee:
- 1. A non-refundable application fee of \$20.00 shall be paid to the Town of Southwest Harbor and a copy of a receipt for the same shall accompany the application.
  - 2. An additional fee may be charged if the Planning Board, CEO, and/or Board of Appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 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 Town 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.
- E. Flood-hazard Permit:
- A flood –hazard permit is valid for 180 days (approximately 6 months). The applicant must reapply for a new permit if construction has not started.

### SECTION III. PROCEDURE TO REVIEW

The Planning Board and CEO Shall:

- A. Review all applications to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of SECTION IV (Development Standards), have been, or will be met;
- B. Utilize the base flood data contained in the "Floor Insurance Study – Town of Southwest Harbor." In special flood hazard areas where base flood elevation data are not provided, the Planning Board or CEO 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 this Ordinance. When a base flood elevation in Zone A is established by methods outlined in SECTION II.8.a.2), this information shall be submitted to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in SECTION I;

- D. 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. 1334;
- E. Notify adjacent municipalities, the Department of Environmental protection and the Maine State Office of Community Development 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.
    - a. Part 1 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 CEO with a second Elevation Certificate completed by a professional land Surveyor, registered professional engineer or architect based on the part 1 permit construction, "as built", for verifying compliance with the elevation requirements of SECTION IV.F, G, H or P.
    - b. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the CEO 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 SECTION IV.G.A. 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 SECTION IV.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 no-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 Section V.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of SECTION VIII of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards as required under SECTIONS II, IV, & VI of t his Ordinance.

## SECTION IV. 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 so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. Water Supply – All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- 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 flooding.
- 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 water course.
- F. Residential – New construction or substantial improvement of any residential structure located within:
  - 1. Zone AC shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation.
  - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this Ordinance. SECTIONS II.B.8.a.2); III.B; & VII.D;
  - 3. Zone VE shall meet the requirements below of Coastal Floodplain, paragraph 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 1' above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be flood proofed to at least one foot (1') above the base flood level 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 SECTION II.B.11 and shall include a record of the elevation above mean sea level to which the structure is floodproofed.



2. Zone A shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this Ordinance in SECTIONS II.B.8.a.2); III.B., & VII.D, or together with attendant utility and sanitary facilities meet the floodproofing standards of paragraph 1, above.
  3. Zone VE shall meet the requirements below of Coastal Floodplain, in paragraph P.
- H. Manufactured Homes – New or substantially improved manufactured homes located within:
1. Zone AE shall:
    - a. be elevated on a permanent foundation such that the lowest floor (including basement) of the manufactured home is at least one foot (1') 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' 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' long required four additional ties per side).
      3. all components of the anchoring system described above shall be capable of carrying a force of 4,800 pounds.
  2. Zone A shall:
    - a. be elevated on a permanent foundation, as described above in para. #1b, such that the lowest floor (including basement) of the manufactured home is at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this ordinance, SECTIONS II.B.8.a.2); III.B., & VII.D.; and
    - b. meet the requirements of paragraph 1c above.
  3. Zone VE shall meet the requirements below of Coastal Floodplain in paragraph P.
- I. Recreational Vehicles – Recreational Vehicles located within:
1. Zone AE shall either:
    - a. be on the site for fewer than 180 consecutive days.
    - b. and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or hacking 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 the above section, paragraph 1.

2. Zone VE shall meet the requirements of either 1.a. or 1.b. above or SECTION IV.P.

J. Accessory Structures - Accessory Structures, as defined in SECTION XIII., DEFINITIONS, page 21, located within Zones AC and A shall be exempt from the elevation criteria required in paragraphs F & G, above, if all other requirements of this SECTION and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$2000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in paragraph L.2., below, in at least two different walls of the accessory structure.
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways (does not apply to Coastal Waters)

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" or 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 AW and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other 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 (1') at any point within the Town; and
  - b. is consistent with the technical criteria contained in Section 2-7 entitled "Hydraulic Analysis", Flood Insurance Study – Guidelines and Specifications for Study Contractors, (FEMA 37/January 1995, as amended).
3. In Zone 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 Areal Below the Lowest Floor

New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of this SECTION, including the elevation requirements in 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 SECTION XIII, Page 21.
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 engineers 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 (1’) 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 located within Zones AE, A 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 paragraph K., above; 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 Zones AE, A, and VE shall:

1. have the containment wall elevated to at least one foot (1’) above the base flood elevation;
2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
3. 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 SECTION II.B.11.

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, A, and VE shall be located landward of the reach of mean high tide except as provided in paragraph 6. below.
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 structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot (1') above the base flood elevation;
    2. the pile or column foundation and the elevated portion of the structure attached hereto 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 with non-supporting breakaway walls which 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/February, 1986); 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 this paragraph 2. above.
3. The use of fill for structural support in Zone VE is prohibited.
4. The enclosed areas may be used solely for parking vehicles, building access and storage.

5. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage. (The only sand dune site in Zone VE in Southwest Harbor is in the Cove on Map 10 Lot 1)
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 this SECTION IV.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in SECTION V. and if all the following requirements and those in the above paragraphs A, K, & 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 (1') 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.

## SECTION V. 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 Planner or CEO 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 (30 ) 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 approval of the permit application 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

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.

## SECTION VI. 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 CEO subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the CEO:
1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with SECTION IV. 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 SECTION IV. P.2,
- B. The applicant shall submit written notification to the CEO that the development is complete and complies with the provisions of this Ordinance.
- C. Within ten (10) working days, the Code Enforcement Officer shall:
1. review the request certificate(s) and the applicant's written notification; and,
  2. upon determination that the development conforms with the provisions of this Ordinance, issue a Certificate of Compliance.

## SECTION VII: REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other Federal law, State law, or local ordinances or regulations, and all projects on 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 hazards.
- C. Adequate drainage is provided so as 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 lots in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with SECTION IV of this Ordinance. Such requirements will be included in any deed, lease, purchase and sale agreement or document transferring or expressing the 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 Town may enforce any violation of the construction requirement and that fact shall also be include 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.

## SECTION VIII: APPEALS AND VARIANCES

The Board of Appeals of the Town of Southwest Harbor 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 planning Board or the CEO in the administration 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 and ordinances; and
  - 3. a showing that the existence of the variances will not cause a conflict with other state, federal or local laws and ordinances; and
  - 4. a determination that failure to grant the variances would result in “undue hardship,” which in this sub-section is as defined in the Ordinance of the Southwest Harbor Board of Appeals.
- 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 it deems 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. the other criteria of this section and SECTION IV.K. are met; and
  - 2. the structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threat to public safety.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of Historic Structures upon the determination that:
  - 1. the development meets all of the criteria of paragraphs A – D, above; and,
  - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure’s continued designation as 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 above criteria shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  - 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25.00 per \$100.00 of insurance coverage;
  - 2. such construction below the base flood level increases risks to life and property; and

3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the Town 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 Town from any claims the applicant may have against the Town that are related to the use of land located in the 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 (30) 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 meet to determine a public hearing date on the completed application within thirty-five (35) days of its receipt of the 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 (35) after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board or CEO 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 taken an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

SECTION IX: ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the CEO to enforce the provisions of this Ordinance pursuant to Title 30-A, Section 4452.
- B. The penalties contained therein shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the CEO, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:
  1. the name of the property owner and address or legal description of the property sufficient to confirm its identity of 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.



## SECTION X. 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.

## SECTION XI. 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.

## SECTION XII. ABROGATION

This Ordinance repeals and replaces the FLOODPLAIN MANAGEMENT ORDINANCE FOR THE TOWN OF SOUTHWEST HARBOR, enacted 1977.

## SECTION XIII. 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 principle 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** – the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the “Flood Insurance Study” - Town of Southwest Harbor”.

**BASE FLOOD** – the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**BASEMENT** – any area of the building having its floor 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.

**COASTAL HIGH HAZARD AREA** – the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone VE.

**CODE ENFORCEMENT OFFICER** – any person or board responsible for performing the inspection, licensing and enforcement duties required by a particular statute or Ordinance.

**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 SECTION V.

**COST OF A STRUCTURE** – includes all material and labor costs, but does not include the costs of plans, specifications, and permits. If the materials or servicing equipment are donated or discounted below normal market values, the value shall be adjusted to an amount equivalent to that estimated through normal transaction. Where no-reimbursed labor is involved, the value of the labor shall be

estimated based on applicable minimum-hour wage scales for the type of construction work that is done. The adjustments and estimates shall be made by the local permit official based on his professional judgment and knowledge of the local or regional cost of construction materials and servicing equipment and of the local or regional wage scale for various types of construction work.

**DEVELOPMENT** – any change caused by individuals or entities to improve or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements 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, public or private sewage disposal systems or water supply facilities.

**ELEVATED BUILDING-** a non-basement building:

1. built, in the case of a building in Zones AE or A to have 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
2. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot (1’) above the magnitude of the base flood.

In the case of Zones AC or A, ELEVATED BUILDING also includes a building elevated by means of fill or solid foundation perimeter walls less than 3’ in height with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in SECTION IV. 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 SECTION IV.P.2.b.3).

**ELEVATION CERTIFICATE** – an official form (FEMA Form 81-31, 08/99, as amended) that

1. is used to verify compliance with the floodplain management regulations of the National Flood insurance program (NFIP); and,
2. is required as a condition for purchasing flood insurance.

**FLOOD OR FLOODING** –

1. a general and temporary condition or partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above in 1.

**FLOOD ELEVATION STUDY** – an examination, evaluation and determination of flood hazards and corresponding water surface elevations.

**FLOOD INSURANCE RATE MAAP (FIRM)** – an official map of the Town of Southwest Harbor, 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 FLOOD-PRONE AREA** – any land area susceptible to being inundated by water from any source (see definition of FLOODING).

**FLOODPLAIN MANAGEMENT** – 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 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 or 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.

**FOOTPRINT** – the area enclosed by the perimeter of a structure

**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, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**FUNCTIONALLY DEPENDENT USE** – a use which 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-** Any structure that is:

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a Registered Historic District or a district preliminarily determined by the Secretary of the interior to qualify as a registered historic district;
3. Individually listed on a State Inventory of Historic Places in States with Historic Preservation Programs which have been approved by the Secretary of the interior; or
4. Individually listed on a Local Inventory of Historic Places in communities with Historic preservation programs that have been certified either by an approved State program as determined by the Secretary of the interior, or directly by the secretary of the Interior in States without approved programs.

**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 reference to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean Seal 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 of SECTION IV. L of this Ordinance.

Zone AE & A – the “floor” measurement is for the top of the sill or floor joists; and  
ZONE VE – the “floor” measurement is from the bottom of the floor joists.

**MANUFACTURED HOME** – a structure, transportable in one or more sections, which is build 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.

**MARKET VALUE** – the estimate shall be determined by a Maine Certified Real Estate Appraiser or Assessor. The appraisal shall be done for the whole property, including land and all structures. This total shall then be broken down into its components. In all cases the market value of a structure pertains only to the structure in question and does not include land, landscaping or detached accessory structures on the property. However, when the structure is on a pier, it does include only that part of the pier beneath the footprint of the structure.

**MEAN SEA LEVEL** – for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1919, or other datum, to which base flood elevations shown on a Town’s Flood Insurance Rate map are referenced.

**MINOR DEVELOPMENT** – 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 structure as provided in SECTION IV. 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, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.

**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 town and includes any subsequent improvements to such structures.

**100-YEAR FLOOD** – see BASE FLOOD

**RECREATIONAL VEHICLE** – a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
3. designed to be self-propelled or permanently towable by a motor vehicle; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**REGULATORY FLOODWAY**

1. the channel of a river or other water course and the adjacent land areas that must e reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1’)” and
2. When not designated on the community’s Flood Insurance Rate Map or Flood Boundary and Floodway 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 flood plain, 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 – 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- 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% of the market value of the structure before damage occurred.

SUBSTANTIAL IMPROVEMENT – any singular or successive reconstruction, repair, rehabilitation, addition or other improvement of a structure, the cumulative cost (value) of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the first improvement project following the effective date of 5/1/91. In determining whether a development project constitutes a substantial improvement the total cost (value) of all reconstructions, repairs, rehabilitations, additions, or other improvements shall be accrued over a period of five (5) years from the time of the first permit application following the effective date. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. any alteration of a historic structure provided that the alteration will not preclude the structures' continued designation as an historic structure, and a variance is obtained from the Board of Appeals.

VARIANCE – a grant of relief by the Town from the terms of a floodplain management regulation.

VIOLATION – the failure of a structure or other development to fully comply with the Southwest Harbor Floodplain management Ordinance.

**COASTAL WATERS AND HARBOR ORDINANCE FOR THE  
TOWN OF SOUTHWEST HARBOR**

**APPROVED 05/03/88**

**AMENDED THRU 11/04/2014**

Attested True Copy:

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Marilyn J. Lowell, Town Clerk

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## **SECTION I. GENERAL REGULATIONS**

### **A. Purpose**

This Ordinance is to establish regulations for marine activities occurring within or directly affecting the area within the Harbor and coastal waters of the Town of Southwest Harbor in order to ensure safety to persons and property, to promote availability and use of a valuable public resource, and to create a fair and efficient framework for the administration of that 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.

### **B. Jurisdiction**

1. "Inner Harbor" shall include all navigable waters which ebb and flow between Clark Point spindle and Kings Point.
2. "Coastal Water" shall include all navigable waters which ebb and flow outside the inner Harbor but within the limits of Southwest Harbor between Valley Cove and Ship Harbor.

### **C. Fairways and Anchorage**

Anchorage in the inner Harbor will be limited to the open area SouthEast of Clark Point , and North of the designated major fairway. The anchorage will be considered first come first serve and will be limited to one overnight stay per visit to Southwest Harbor. Recommended Anchorage will begin north of the Clark Point spindle to the Southwest Harbor Town Line at the entrance to Somes Sound.

### **D. Harbormaster**

1. The Selectmen shall annually appoint a Harbormaster upon the advice of the Town Manager and Harbor Committee.
2. The Harbormaster, acting under the orders of the Town Manager, shall have full authority in the interpretation and the enforcement of all regulations affecting the Harbor and the Coastal Waters of Southwest Harbor to the fullest extent permitted by law except as otherwise provided herein.
3. The Harbormaster may remove any hazards to navigation that may cause damage to others.

### **E. Harbor Committee**

1. There shall be a Harbor Committee consisting of not less than five (5) nor more than twelve (12) citizens of Southwest Harbor at large appointed by the Board of Selectmen for a three year term. A quorum shall consist of a majority of the current members.
2. Said Committee, under the general direction of the Board of Selectmen, shall advise in the custody, care and management of the Harbor and its facilities, and the Coastal Waters, not inconsistent with the duties of the Harbormaster as set forth in the Ordinance or by the Maine Revised Statutes.
3. The Committee shall serve without compensation.



## **F. Public Notice**

1. Any project which is to be discussed at a Harbor Committee Meeting must be placed on the Agenda fourteen (14) days before the meeting and the Agenda posted in two (2) places - one of which must be in the Town Office - at least seven (7) days before the Meeting.

2. Any applicant with a project to be discussed by the Harbor Committee must return a completed application at least fourteen (14) days before the Harbor Committee's regular meeting.

## **SECTION II. DESIGNATED MOORING AREA**

**A. The project areas A, B, and C within the Inner Harbor are considered a commercial mooring area.** These areas are as designated on the Harbor Mooring Plan in the Town Office.

**B. Commercial boats, scows, lobster cars and floats may be moored in this area.** Marine builders and repair facilities may own moorings for customer service-repair on a temporary basis only. More than one commercial mooring may be owned and used for year round purposes as deemed necessary by the Harbor Master.

### **C. Restrictions/requirements:**

1. No watercraft will anchor or raft up in this area.

2. Absolutely no moorings will be leased or rented within these project areas A, B, C; all other mooring areas leased or rented require approval of the Army Corp of Engineers and the Harbormaster.

3. Fixed water objects such as lobster cars, floats, scows etc. will be equipped with reflective tape a minimum of four (4) inches in diameter or width, visible from all angles, installed and maintained at least four (4) feet above the water line on at least both ends of the moored contraption. Name and license number of owner will be carved or burned into a main structural member.

4. If Project areas A, B, C become filled to capacity, the Harbormaster may displace non-commercial vessels, giving priority to commercial fishing vessels, provided the Harbormaster has a mooring for the displaced vessel.

5. Houseboats are prohibited from mooring or anchoring in any coastal waters of Southwest Harbor except at marinas which provide the following:

- (a) A permanent float, dock or slip from which the houseboat may be directly boarded from land;
- (b) Connection to a public water supply by means of an individual anti-backflow valve;
- (c) A sewer connection to a public sewage system;
- (d) A year-round, all weather supply of electricity;
- (e) Parking as required by the codes and ordinances of the municipality where the marina is located;
- (f) Compliance with the applicable land use codes

6. Floating businesses shall be assigned moorings in limited numbers and in specific areas designated by the Harbormaster.

## **SECTION III. REGULATIONS CONCERNING MOORINGS, DOCKS, & MARINAS**

### **A. Mooring Registration Procedure**

1. Each owner of a mooring within the Boundaries of Southwest Harbor must annually pay a fee set forth by the Selectmen; said fee must be paid to the Town Office on or before the 15<sup>th</sup> of May of each year. Failure to comply may result in removal of mooring and lost of berth.

A. Any Mooring(s) which have not been occupied with a watercraft for two consecutive boating seasons will lose its registration. The mooring registrant must request and be granted a variance from the Harbor Master if no use is evident. The Harbor Master may request proof of mooring use for the registrant if the mooring is in question.

2. All new applicants must fill out and return an application to the Harbormaster. The Mooring Registration Application form may be obtained from the Town Office or the Harbormaster. The Applicant shall pay an annual fee set by the Selectmen to remain on a waiting list until approved or denied by the Harbor Master.

3. The Harbormaster shall use the Mooring Plan and shall grant, deny, or defer each application. The Harbor Master may deny an application because of insufficient information on the Mooring Registration Application or because of other reasons as specified by the Harbor Master. The Harbor Master may defer an application because of insufficient space for the desired mooring location or because of other reasons as specified by the Harbor Master. The Harbor Master may grant an application with priority to be given applicants who owned moorings in place (prior to date of Ordinance), and with priority to be given applicants who are riparian owners in the Town of Southwest Harbor.

4. Each applicant shall be notified by the Harbormaster of the action decided upon. The Harbormaster shall keep a written record of each decision made on all applications. The Harbor Master shall issue a Mooring Permit, which shall include location instructions and the Permit Number to each applicant of a granted application. Each mooring permit shall be valid for a period not to exceed one year.

5. All moorings shall have attached a ball or similar device of at least 18 inches in diameter, and be at least 2/3 above water at all times. This device will be marked with owner's initials and permit number in a manageable and legible manner.

6. Each owner of a Mooring Permit shall be responsible for procurement, installation, and maintenance of their mooring.

7. All moorings shall be inspected at least every three (3) years by a qualified person. All defects found will be corrected within a reasonable time to be determined by the Harbormaster. A record of all inspections will be maintained by the Harbormaster. The Harbormaster will supply a list of qualified inspectors. No watercraft will be allowed to remain on an unsafe mooring until the mooring is certified corrected.

8. Defective/unregistered/abandoned moorings shall be removed from the Harbor within a reasonable time frame after written notification to owners if possible. Such removal will be at the expense of the owner with the mooring becoming the property of the Town. Reasonable time (10 - 30 days) is to be determined by the Harbormaster. All moorings will be set and moved only by direction of the Harbormaster.

9. Mooring permits will only be issued to bona fide boat owners who intend to use such mooring for the boat so documented to that owner. Multiple mooring requests will not be considered unless significant and anticipated long term mooring space is available. Lease/rental moorings will fall within this same category for approval plus a Federal mooring permit certificate must be made available at time of application request. The Harbor Master will determine this status.

10. Existing year-round mooring users have preference on a first come basis to vacated moorings, unless otherwise determined by the Army Corps of Engineers or the State of Maine.

11. All boat excise taxes must be paid to the Town of Southwest Harbor each year to obtain mooring owner status.

## **B. Docks/floats**

1. Docking time at all Town floats shall not exceed two (2) hours within a twenty-four (24) hour period. The Harbormaster may permit longer docking time on a case by case basis due to extenuating circumstances. The burden to notify the Harbor Master regarding extenuating circumstances lies on the owner of the docked boat.

2. Time limit at the Head of all Town floats will be load/unload only, not to exceed twenty (20) minutes. The Harbormaster may permit otherwise on a bona fide emergency basis.

3. Absolutely no gear of any type, to include rowboats, fish/dragging equipment or any other type may be left unattended on Town floats. The Harbormaster may permit otherwise on a bona fide emergency basis.

4. No type of repair, maintenance, operation, storage or business will be conducted on any Town float. Work may be done aboard a vessel tied to a float, but not on the float itself, unless authorized by the Harbormaster.

5. All Town launching ramps will be used for launch and haul purposes only. All obstructions will immediately be removed from ramp.

6. Town dock priority load/unload - Priority access to the lower Town dock, and the Manset Town dock will be given to commercial fishing vessel loading/unloading requirements as the tide/access level permits. Vessels which are moved or disturbed to provide this priority service, have first priority to return to their original berth upon completion of loading/unloading.

7. Within the waters of Southwest Harbor, no dock, pier, bridge and/or float will extend beyond the six foot mean low-water line as defined by 12/14/88 Harbor Mooring Plan unless the applicant can show the Harbor Committee that:

- a. To be usable, the dock, pier, and/or float must be extended beyond this point;
- b. The intended use is shown and the specific requirements of this use proved;
- c. The extension will not jeopardize the safety and navigation in the Harbor;
- d. Displaced moorings can be relocated in a reasonable manner; and

e. The extension will meet any and all special regulations of the Federal, State and Local Governments.

No present dock or pier may be extended by any means if its length presently meets or exceeds this six foot (MLW) rule unless it meets the same criteria.

### **C. Use of Docks and Floats**

1. In order to more efficiently regulate the use of the Docks and Floats, each user is required to comply with all Rules and Regulations of the Harbor Ordinance. Violations may lead to loss or suspension of all Harbor privileges.

A. If a user has acquired 3 or more tickets during the calendar year, for any violations of violations of the Harbor Ordinance, the users harbor privileges will be suspended for a time period of 90 days from the time of the last violation.

B. Any ticket that is unpaid after 14 days will result in suspension of harbor privileges until all fines are paid.

The Lower Town dock, the Upper Town dock, and the Manset Town dock shall give priority of use in the order as follows:

- a. Commercial full-time resident fishermen
- b. Commercial part-time resident fishermen
- c. Other marine related resident businesses
- d. Non-resident full-time fishermen
- e. Non-resident part-time fishermen
- f. Other marine related businesses uses

#### 2. Leased Floats

A. Lessee will paint the name-holder on the float.

B. Leased floats may be used 24 hours a day if a qualified operator is on board the craft during the hours of darkness.

C. If the leased float is not being used by the lessee, the float may be used for loading and unloading by the public as long as the craft is attended by a qualified operator.

D. Established leases will be given priority to those with prior year lease, unless notice is given to lessee or leaser stating the reason for termination of this arrangement.

E. Dockage fees: leased dock fees at Town docks for the months of May through September are due May first (1). Public dock user fees will be determined by the Board of Selectmen after referral from the Harbor Committee.

#### 3. Commercial Use of Town docks, piers

A. The point of embarkation at the Manset Town Pier, the Lower Town Dock or the Upper Town Dock or any floats for passengers to any vessel for hire such as a tour boat, day sailor or a charter

vessel shall not be permitted. Such vessels shall not originate or operate from any municipal pier or float, which also includes ferrying passengers from the municipal pier or float to a vessel for hire moored in the Harbor.

B. Ferry service on a regular schedule may be permitted with approval from Selectmen however it will be limited to the Upper Town dock. A seasonal fee will be assessed and must be paid prior to the use of facility. The Selectmen reserve the right to approve or deny any application after receiving comments from the Harbor Committee, the Harbormaster and the general public.

#### **D. Marinas**

1. No marina may extend beyond the six foot mean low-water line as defined by the 12/14/88 Harbor Mooring Plan unless the criteria in B.7. has been met.

2. A detailed feasible and effective evacuation plan of all watercraft located at any commercial marina within the Harbor must be submitted to and approved by the Harbor Committee prior to Harbor Committee project approval. All watercraft must have either an assigned and secure mooring within the Harbor or it must be able to leave the Harbor prior to extreme weather conditions. All details of this plan will be in written form, reviewed and updated as need be on an annual basis, and submitted to the Harbor Master for review and/or ongoing approval. The authority to initiate this plan may be by Marina owners, appropriate government or state agency or the Harbor Master based on his discretion.

3. Any marina within the Harbor shall have an adequate and approved breakwater or attenuator on the seaward side (East to Southwest) to prevent potential storm and sea surge loss and/or damage to the Marina and to all other interests within the Harbor which may be affected by such loss or damage to the Marina. The Harbor Committee reserves the right to review and approve any breakwater plan or scheme prior to marina approval. The breakwater must be constructed prior to any marina operation. This may be waived by the Selectmen with advice by the Harbor Committee, based on expert testimony that a breakwater or attenuator is not required.

#### **SECTION IV. PROHIBITED ACTS**

A. No person shall install or cause to be installed any mooring in the Inner Harbor in any location not designated by his/her Mooring Permit.

B. No person shall assign or otherwise transfer a Mooring Permit.

C. Any mooring within the limits of the Town of Southwest Harbor whose fee has not been paid by its owner for a period of thirty days after it was due shall be deemed to have been abandoned and shall be removed by the owner after he/she has been directed to do so by the Harbor Master. If no owner is forthcoming, the Harbor Master may remove the mooring.

D. No person shall refuse to obey a lawful order of the Harbor Master.

E. No person shall operate or cause to be operated any aircraft to land or take-off from the Inner Harbor of Southwest Harbor.

F. No person shall anchor or cause to be anchored any craft in the Inner Harbor so as to obstruct a channel or mooring from free passage of boats.

G. No person shall deposit, throw, sweep or cause to be deposited, thrown or swept into the waters of Southwest Harbor or into waters adjacent thereto any gas or oil or bilge water containing same, ashes, stones, gravel, mud, logs, planks, craft or any other substance tending to obstruct the navigation of said waters of Southwest Harbor or waters adjacent thereto, or to shoal the depth of said waters or pollutes said waters.

H. No person shall dump or dispose of any refuse or garbage upon any shore of the Town of Southwest Harbor, at or between high and low water mark, or upon the waters of the ocean within the Town of Southwest Harbor.

I. Craft under 12' in length shall not be tied up at Town floats. They shall be required to tie-up at finger floats designated for this purpose.

J. No person shall intentionally, knowingly, recklessly, or negligently destroy, damage, disturb, deface, or interfere with any sign, notice, channel marker, buoy, float, life preserver, Harbor Master Boat, or any other municipal property under the jurisdiction of the Town of Southwest Harbor.

K. No person shall permit or place more than one craft at a mooring unless such craft does not interfere with adjacent moorings and anchorages or other navigational considerations as determined by the Harbor Master.

L. No person shall water ski within the Inner Harbor.

M. No craft in the Inner Harbor shall exceed a reasonable and prudent speed, or cause excessive wake.

N. No person, including any owner or operator of any craft, shall processor permit to be processed any seafood products at any Town float.

O. No personal property shall be left on the Town docks for more than 24 hours.

P. At dinghy floats, vessels may not exceed 14 feet in length or 6 feet in beam.

## **SECTION V. FEES**

Fees shall be set from time to time by the Board of Selectmen for the following:

1. All mooring permit applications.
2. Seasonal Tender Tie-ups at Town Docks
3. Daily Transient Guest Moorings
4. Seasonal Leased Floats
5. Dock user fees
6. Hoist Fee
7. All other Harbor facilities.

## **SECTION VI. PENALTIES AND ENFORCEMENT**

- A. Any person who shall violate any provision of this Ordinance shall be punished upon conviction by revocation of their mooring permit or by a fine of not less than \$100.00 and not more than \$500.00 to be recovered upon complaint by the Harbor Master before the District Court. All fines shall inure to the Town of Southwest Harbor. Each day that such violation continues to exist shall constitute a separate offense.
- B. Boat docking tickets shall be \$25.00 for an illegal overnight stay and \$15.00 for an illegal daytime stay. Non-payment shall constitute a violation of this Ordinance.
- C. It shall be illegal to bring in, to retain in, or abandon in the Harbor of the Town of Southwest Harbor, any derelict craft, float, lobster car or craft to be salvage, without first obtaining permission from the Harbor Committee or the Harbor Master. Non-compliance with this regulation will constitute a violation and shall be subject to the maximum fine of \$500.00 and the cost of cleanup.
- D. Violations of the terms of permits for use of dock and floats may lead to the loss or suspension of the privilege to use docks and floats.

## **SECTION VII. APPEAL**

- A. Any person adversely affected by a decision of the Harbor Master, other than law enforcement situations may appeal to the Board of Appeals. Law enforcement actions are handled directly through the criminal justice system. Law enforcement includes but is not limited to state laws, local ordinance enforcement, warnings, summons, and citations.

## **SECTION VIII. DEFINITIONS**

**ACCESSORY CHANNEL** - Those channels which commence from the Navigational Channel and are designated in the Mooring Plan for Southwest Harbor.

**ANCHOR** - Any appliance used by a craft for anchoring purposes and which appliance is carried aboard such craft when under way as regular equipment.

**BREAKWATER** - Any structure that would create a safe haven for craft.

**CHANNEL** - An area of movement which shall be determined by the Harbor Committee, marked by the standard Coast Guard colors and maintained by the Town of Southwest Harbor.

**CRAFT** - Every description of watercraft including boats of all kinds, seaplanes, floats, scows and lobster cars used or capable of being used for any purpose on water.

**FLOAT** - Any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

**FLOATING BUSINESS** - Any building constructed on a raft, barge, or hull, which is represented as a place of business, including but not limited to waterborne hotels, restaurants, marinas or marina-related businesses.

**HOUSEBOAT** - A raft, hull, barge or vessel, designed primarily to be used as living quarters, and providing living, sleeping, cooking and sanitary facilities, whether temporarily or permanently.

INNER HARBOR - All of the tidal water inside and west of a line drawn from Clark Point to Kings Point.

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

MOORING - Any appliance used by a craft for anchoring purposes and which appliance is not carried aboard such craft when under way as regular equipment.

RESIDENT - Any person who occupies a dwelling within the Town of Southwest Harbor for more than 183 days or pays Real Estate Taxes to the Town of Southwest Harbor.

RIPARIAN OWNER - The owner of the land or an interest in land in Southwest Harbor to high water mark or low water mark.



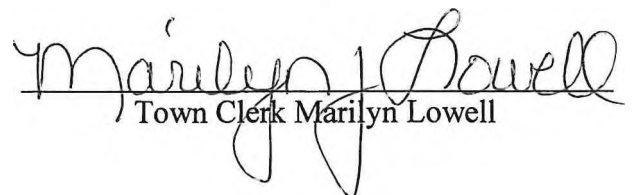


## **Town of Southwest Harbor**

# **Land Use Ordinance**

Approved: June 29, 1992  
Amended: Through May 4, 2010  
Amended: Through June 8, 2010  
Amended: Through November 2<sup>nd</sup>, 2010  
Amended: Through November 5, 2013  
Amended: Through November 7, 2017  
Amended: Through May 8, 2018  
Amended: Through May 9, 2019

Attested True Copy:

  
Town Clerk Marilyn Lowell



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## SECTION I: INTRODUCTION

### A. Title, Authority, and Administration

1. This ordinance shall be known and may be cited as the “Southeast Harbor Land Use Ordinance of the Town of Southwest Harbor”
2. This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of M.R.S.A. 30-A §4301, et seq., and the Mandatory Shoreland Zoning Act, M.R.S.A. 38 §435 et seq.
3. This Ordinance shall be administered by the Planning Board and the Code Enforcement Officer of the Town of Southwest Harbor.

### B. Purpose of the Ordinance

1. The Southwest Harbor Land Use Ordinance (LUO) seeks to maintain a safe, healthy, and attractive environment. It is intended to regulate the construction of buildings, roads, signs, etc., and the uses to which buildings are put, so as to ensure that they do not cause damage to their neighbors or to natural resources (such as ground water, wetlands, fish spawning grounds, aquatic life, bird and other wildlife habitat, etc.), and so that such developments do not create dangerous situations on the public roads or overload the public services of the Town. The LUO also seeks to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources, and to protect commercial fishing and maritime industries, to prevent and control water pollution, to protect freshwater and coastal wetlands, to conserve shore cover; actual points of public access to inland and coastal waters, to conserve natural beauty and open space.
2. In addition, the LUO contains provisions to reflect the Southwest Harbor Comprehensive Plan, approved May 5<sup>th</sup>, 1997.
3. To achieve these ends, the Ordinance sets out standards such as density; setbacks from roads, property lines, water bodies, and wetlands; height limits; buffering by means of planted areas; off-street parking requirements; etc. Some of these standards vary in the different zones and with different land uses.
4. Applicants for building permits are obliged to provide the Town with information, including site plans, sufficient to judge all the above factors. Generally, the Town is not concerned with maintenance work or alterations within a building, which do not affect its footprint, its location, height or use.

### C. Planning Objectives

1. The existing pattern of Southwest Harbor is not one of exclusive residential, industrial and commercial areas. This Ordinance seeks to maintain a mixture of uses by allowing most land use activities in most areas of the Town. Several zones have been established. The difference between most zones is not in allowable land use activities, but rather in the allowable density of the activity. In the downtown zone, for example, the limitations on commercial building are less burdensome than in the other zones. Limitations differ depending upon whether town sewer is available or not, and in which zone the activity occurs.
2. The development of the harbor area in Southwest Harbor is most critical to the future of the whole town. The Ordinance seeks to provide an area to serve recreational and commercial marine interest,

and at the same time permit a diversity of activities to maintain the economic viability of the harbor. The harbor zones encourage marine related commercial activities and specifically discourage uses and activities, which are more suited to highway locations because of their scale and need for access and parking facilities.

D. Effective Date

- (1) The effective date of this Ordinance is June 29th, 1992, or as amended thereafter. A certified copy of this Ordinance is filed with the Town Clerk and is accessible to any member of the public. Copies are available for reference and may be purchased for a reasonable fee to be determined by the Board of Selectmen. Certified copies of the relevant accompanying maps are filed in the Town Office.
- (2) Repeal of Municipal Timber Harvesting Regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under M.R.S.A. 38 § 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A § 438-B (5), the following provisions of this Ordinance are repealed:

Section VII (O) in its entirety; and Section XIII Definitions, the definitions pertaining to timber harvesting and forest management activities.

NOTE: The statutory date established under 38 M.R.S.A. § 438-B (5) is the effective date of state-wide 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 state-wide standards." 38 M.R.S.A. §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 state-wide standards

E. Other Legislation

1. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance. The Town is obliged to notify applicants of the requirements of State and Federal legislation. Permits must be received for the regulated activity from the government body before the Town will approve a scheme. The Town may give the permission conditional on the receipt of the permit.
2. The Federal agencies: Army Corps of Engineers – concerned with rights in the water
3. The State agencies:
  - a. Department of Environmental Protection (DEP) – Natural Resource Protection Act (development in or near streams, lakes, coastal waters, and coastal and freshwater wetlands)
  - b. Maine Department of Transportation (MDOT) – Road openings and road/driveway entrances
  - c. State Fire Marshal's Office – Fire safety & handicapped access.
  - d. Local Plumbing Inspector (LPI) – New or altered plumbing or an increase in the number of bedrooms
  - e. Maine Department of Transportation (MDOT) - Law concerning the protection of underground utilities (the so-called 'Dig Safe' law), M. R. S. A. 23, § 3360-A.

4. The Town Requirements:
  - a. The Town is mandated to administer the State Shoreland Zoning Ordinance and the minimum requirements are contained within this Ordinance. Any development in the Shoreland Zones including great ponds, rivers, streams, tributary streams, freshwater wetlands, and coastal wetlands which satisfies the requirements of this Ordinance also satisfies the State Shoreland Zoning Administration.
  - b. The Town also administers the Floodplain Management Ordinance and any development in flood hazard zones must conform to this Ordinance.
  - c. Other Town requirements are:
    - 1) Driveway/road entrance permit;
    - 2) Sewer permit and/or a water permit

F. Boundary Map

The "Town of Southwest Harbor, Maine, Land Use Map" shall be drawn on a scale of not less than: 1 inch = 1000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.



## SECTION II: GENERAL REGULATIONS AND STANDARDS

### A. General Regulations

1. Any structure or property in the Town devoted to a lawful use at the time of adoption of this Ordinance may continue in such use until abandoned.
2. After the date of adoption of this Ordinance, all buildings, structures, land or parts thereof shall be erected, constructed, expanded moved or structurally altered in conformance with the land use, structure and performance standards herein specified for the zone in which they are located. All new lots shall be created in conformance with the lot size, structure, and performance standards herein specified for the zone in which they are located. This ordinance also applies to all land areas within 250 feet, horizontal distance of the:
  - a) Normal high-water line of any great pond or river
  - b) Upland edge of a coastal wetland, including all areas affected by tidal action, or
  - c) Upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

And 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.

3. Normal repairs and maintenance do not need a permit from the Town as long as they do not involve expansion of a structure or use, or a change in use. This ordinance 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 local building and safety codes may require.
4. Each subdivision requires approval by the Planning Board in accordance with provisions of this ordinance and of the "Subdivision Ordinance of the Town of "Southwest Harbor". A building permit may be approved simultaneously for construction within the first year of subdivision approval.
5. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in a shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate Town Officials. Following installation of service, the company/district shall forward the written authorization to the Town, indicating that the installation has been completed.
6. Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
7. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.
8. To be enforceable, this Ordinance must have been adopted by the Town of Southwest Harbor's legislative body and approved by the Commissioner of the Department of Environmental Protection.
9. The Code Enforcement Officer shall determine whether the property is in compliance with any applicable Ordinance and any previously issued permit. Any property deemed "not in compliance" shall not be issued any new permit until such time as the Code Enforcement Officer shall certify the property is in compliance.

## B. GENERAL STANDARDS

### 1. STRUCTURE

#### a. Definition

The term structure is defined as anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops. The term 'structures' in the shoreland zone includes structures temporarily or permanently located, such as decks, patios, balconies, piers, dumpsters, and satellite dishes; but excludes incidental structures for residential use, such as picnic tables, chairs, birdhouses, flagpoles.

#### b. Setbacks

- 1) The structure setback standards for driveways, parking areas, roads, and signs are detailed in the following sections of the Ordinance:

Driveways.....page 25

Parking areas.....page 28

Roads.....page 31

Signs.....page 34

- 2) Any setback measurements from the normal high-water line of and water body, stream, tributary stream or the upland edge of a wetland are horizontal distances.
- 3) The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- 4) Stairways or similar structures may be allowed within the water or wetland setback area with a permit from the Code Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils provided:
  - a) The structure is limited to a maximum of Four Feet (4') in width;
  - b) 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 DEP pursuant to the Natural Resources Protection Act (NRPA), M. R. S.A. 38 § 480-Cet seq, and
  - c) The applicant demonstrates that no reasonable access alternative exists on the property.

#### c. Structures and uses

- 1) If more than one structure or use, or combination thereof, is constructed, established or placed on a single parcel in common ownership, all structure standards shall be met for each structure or use except in shore land zones which shall include minimum lot area per dwelling unit or use.
- 2) Dimensional requirements are specified within the structure standards for multi-family development.
- 3) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at their 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.

- d. Minimum residential floor space in all zones is Two hundred Fifty (250) sq. ft.
- e. Flood hazard regulations  
All openings or the equivalent to the first lowest floor elevation of all new construction or substantial improvement to existing buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood. (See Southwest Harbor's Floodplain Ordinance).
- f. Retaining Walls  
Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - (1) The site has been previously altered and an effective vegetated buffer does not exist;
  - (2) The wall(s) is (are) at least Twenty Five feet (25) from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (3) 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;
  - (4) The total height of the wall(s), in the aggregate, is no more than 24”;
  - (5) Retaining walls are located outside of the One Hundred (100)-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (6) The area behind the wall is re-vegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (7) A vegetated buffer area is established within Twenty Five feet (25) 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 storm water runoff;
    - (iii) Only native species may be used to establish the buffer area;
    - (iv) A minimum buffer width of Fifteen feet (15) 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 VI (B) may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within Seventy Five feet (75) of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

## 2. LOTS

- a. Minimum lot area
  - 1) Land below the normal high-water line of a water body or upland edge of a wetland shall not be included toward calculating minimum lot area.
  - 2) Land beneath rights-of-ways providing access to the lots of the proposed subdivision

or any subdivisions approved after 5/3/88 shall not be included in calculating minimum lot area.

- 3) Land beneath roads serving more than two lots in Shoreland Zones and in Zone A within One Hundred-Fifty feet (150') of the NHL shall not be included toward calculating minimum lot area.

b. Shore frontage

- 1) The minimum width of any portion of any lot within One Hundred feet (100) of the normal high-water 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.
- 2) Shore frontage is measured in a straight line between the intersections of the lot lines with the shoreline.

c. Separate tracts or parcels of land:

Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971, or unless one or more of the lots within the Harbor, Commercial Fishery/Maritime Activity, Maritime Activity or the Residential Shoreland zones, or 250' of any freshwater wetlands, are non-conforming and the parcels were described as one lot on the recorded deed at the time of adoption of this Ordinance.

d. Lot coverage

The calculation of lot coverage in the Shoreland Zones and within 250' of the normal high-water line of Zone A shall include all non-vegetated surfaces in addition to buildings. In the other zones, lot coverage includes only buildings.

3. ROADS AND DRIVEWAYS

The Planning Board may require a traffic impact analysis report by a registered professional engineer to show that (1) the roads giving access to the development and (2) the neighboring roads have adequate carrying capacity to accommodate the amount and types of traffic to be generated by the proposed use.

## SECTION III: NON-CONFORMANCE

### A. PURPOSE

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance (June 29th, 1992) shall be allowed to continue, subject to the requirements set forth in this Section III. Except, as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

### B. GENERAL

#### 1. TRANSFER OF OWNERSHIP

Non-conforming lots, roads, driveways, structures, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming lot, road, driveway or structure, subject to the provisions of this Ordinance.

#### 2. REPAIR AND MAINTENANCE

This Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of non-conforming roads, driveways, structures and uses including repairs or renovations that do not involve expansion of any part of the non-conforming use or structure.

#### 3. MANDATED CHANGES

Any change in a non-conforming use or structure which does not comply with the provisions of this Ordinance, but which is mandated by Federal, State, or local building and safety codes shall be allowed with a permit.

### C. NON-CONFORMING STRUCTURES

#### 1. EXPANSIONS

- a. Any addition to or expansion of a non-conforming structure must conform to the standards of this Ordinance, unless a variance is obtained from the Board of Appeals. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

#### EXCEPTIONS:

- 1) Single family residential structures in all zones and commercial structures in Zone A except any structure or portion within 75' of the normal high-water line may be added to or expanded:
  - (a) If there is no change outside the existing footprint of any non-conforming portion of the structure as it existed on the face of the earth on May 3rd, 1988, and
  - (b) The increase in height of any non-conforming part of the structure is no greater than 12' during the lifetime of the building and no higher than the maximum elevation standard for the zone.
- 2) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded as measured in floor area or volume by thirty (30%) or more during the lifetime of the structure. No expansion is allowed towards the shore line. If the replacement structure conforms with the requirements of Section (C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded to 30% in floor area and volume since that date. (5-4-10)

- b. The addition or expansion of a deck shall constitute an expansion.
- c. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure the structure and new foundation must be placed so that the set back and other dimensional requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section(C)(2)(c) Relocation, below, if:

The completed foundation does not extend beyond the exterior dimensions of the structure except for expansion in conformity with Section III (C)(1)(a)(2) above, 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 (from original ground level to the bottom of the first floor sill), it shall not be considered an expansion of the structure

## 2. RELOCATION

- a. A non-conforming structure or part thereof may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback and other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules.
- b. No structure or portion thereof which is less than the required setback from a property line, the road setback line, the centerline of a road, or the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be relocated either toward or along the property line(s), road(s), shoreline.
- c. In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other 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 in order to relocate a structure in the Harbor, Commercial Fishery/Maritime Activity, Maritime Activity or the Residential Shoreland zones, or within the Shoreland Zone elsewhere, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:
  - 1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. 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 the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover replanted must consist of similar vegetation and/or ground cover that was disturbed, destroyed or removed.

- 2 In all cases, 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

- a. Any non-conforming structure or part thereof which is located less than the required setback from the normal high-water line of a water body, tributary stream or upland edge of a wetland, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed regardless of the cause, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. 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 setback it shall not be any larger than the original structure, except as allowed in Section III (C) ((1)), 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 setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section III (C) (2) (c) above.

No structure or portion thereof which is less than the required setback from a property line, the road setback line, the centerline of a road, or the normal high-water line of a water body, stream, or upland edge of a wetland shall be reconstructed or replaced either toward or along the property line(s), road(s), or the water body, stream, or wetland edge.

- b. In determining whether the reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider in addition to the criteria in Section (C) (2) (c) above, the physical condition and type of foundation present, if any.
- c. Any non-conforming structure or part thereof which meets the water setback requirement and which is either partially or completely removed, or damaged or destroyed, may be reconstructed or replaced within one year of the date of said removal, damage or destruction, provided that the reconstructed or replaced structure conforms to all setback, height and lot coverage requirements to the greatest practical extent as determined by the Planning Board in determining whether the building reconstruction meets the Ordinance requirements to the greatest practical extent, the Planning Board shall consider the criteria in Section(C)(2)(c) above.

### 4. CHANGE OF USE OF A NON-CONFORMING STRUCTURE

- a. 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, wetland, or on the subject or adjacent properties and resources than the existing use.

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

D. NON-CONFORMING USES

1. EXPANSIONS

Subject to the following conditions, a non-conforming use may be expanded in compliance with the structure and performance standards of this Ordinance. The conditions:

- a. Such addition or enlargement may not increase the total volume or area in use by more than Thirty (30%) of the volume or area existing at the time of passage of the Development Control Ordinance on May 3rd, 1988, or subsequent amendment, or the Land Use Ordinance on June 29th, 1992, or subsequent amendment.
- b. The Planning Board shall require written certification of the area and volume of the use at the time the use became non-conforming.

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 that 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 Five (5) year period.

3. CHANGE OF USE

- a. An existing non-conforming use may be changed to another non-conforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the area than the existing non-conforming use and has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA Zone, than the former use.
- b. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use.
- c. 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 management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

E. NON-CONFORMING LOTS

1. VACANT LOTS

A vacant non-conforming lot of record as of the effective date of this Ordinance or amendment thereto be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot 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. BUILT LOTS

A non-conforming lot of record that was built upon prior to the enactment or subsequent amendment of this Ordinance is subject to the following restrictions:

- a. The structure may be maintained or repaired, and may be enlarged in conformity with the standards of this Ordinance.
- b. If the proposed enlargement cannot meet the dimensional requirements of this Ordinance, relief from the denial may be sought from the Board of Appeals (see SECTION IX).
- c. If the primary use of a non-conforming lot is residential, and the residential lot is non-conforming because of its size, the CEO may issue a permit for one and only one accessory structure within three (3) feet of the lot line if all other LUO Performance Standards are met in addition to the following standards:
  - 1) The accessory structure may be used for storage only and the use of the structure may not be changed.
  - 2) The accessory structure shall be no greater than eighty (80) square feet in footprint area.
  - 3) The height of the building shall be no greater than ten (10) feet and there shall be no utilities in the structure.
  - 4) No noise shall be allowed to emanate from the accessory structure other than what would be considered residential in nature.
  - 5) It shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations in the shoreland zone. In no case shall the structure be located closer to the shoreline or tributary stream than the principle structure or required setback, whichever is closer.

3. CONTIGUOUS BUILT LOTS

- a. If 2 or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that 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.
- b. If two (2) or more principal uses or structures exist on a single lot of record, the lot shall not be divided in a manner that creates a non-conforming lot(s) or causes a non-conforming lot to become more non-conforming.

4. CONTIGUOUS LOTS – VACANT OR PARTIALLY BUILT

If 2 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 and if all or part of the lots do not 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 lands involved shall be considered to be a single parcel for the purposes of this Ordinance and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter. This subsection shall not apply to any subdivision approved by the planning board for which an approved plan was recorded in the county registry of deeds prior to the adoption of the ordinance from which this chapter is derived.

5. BOUNDARY ADJUSTMENT

Boundaries may be adjusted provided that the resulting lots are not more non-conforming.

## SECTION IV: DEFINITION OF ZONES

For the purpose of this Ordinance the Town of Southwest Harbor is hereby divided into eight zones. The zones are shown on a map entitled "Town of Southwest Harbor, Maine, Land Use Map", dated June 29th, 1992, and as amended. (A reduction of this map is included in the Appendix.) The Town of Southwest Harbor has mapped its natural resources, roads, and utilities on GIS (Geographical Information System) Maps. When the density limitation within a zone and the density limitation on the map "Town of Southwest Harbor, Maine, Subsurface Sewage Disposal, Soil Suitability/State Plumbing Code" are in conflict, the more restrictive density shall apply. These maps, certified by the attested signature of the Municipal Clerk, are hereby made part of this Ordinance, and copies shall remain on file in the Town Office.

**ZONE A**        The most densely built up and developed Town area. Most lots are served by the Town Sewer and Water. It includes areas of mixed, light commercial and residential uses.

**ZONE B**        Less densely developed than Zone A, this area is either served by the Town Sewer and Water or is in such a location as to be able to connect into them. It includes areas of mixed, commercial, industrial and residential uses.

**ZONE C**        Delete Zone C from the Land Use Ordinance: Replaced by above ordinance

### COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE

Shoreland areas within the Harbor which already contain or appropriately might contain commercial uses primarily related to the traditional fishing industries. Recreational water-dependent uses are limited in order to protect berthing space and onshore staging areas for commercial fishing enterprises.

### MARITIME ACTIVITY ZONE

Shoreland areas of restricted size within the Harbor which already contain or appropriately might contain commercial uses primarily related to marine recreation, commerce, and services.

### HARBOR ZONE

The other shoreland areas within the Harbor which allow not only the same uses as the Maritime Activity Zone, but also encourage the development of single family residential use.

### RESIDENTIAL SHORELAND ZONE

Shoreland residential areas on both tidal and fresh water, but not in the harbor area.

### RESOURCE PROTECTION ZONE

Those land and water areas recognized to be of exceptional natural character and importance, including floodplains, selected estuaries, and small islands, in which development would lower water quality, significantly disturb essential plant and animal relationships, or general scenic and natural values. This zone shall include the following areas when they occur within the limits of the shoreland zone, except that as which are currently developed and areas which meet the criteria for the Zone A, Harbor, Commercial Fishery/Maritime Activity, and Maritime Activity Districts need not be included within the Resource Protection Zone:

Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted

on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. Coastal wetlands are rated as of January 1, 1973, and freshwater wetlands are rated as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. "Wetlands associated with great ponds" are considered to be part of that great pond.

Areas within the 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

Areas of two or more contiguous acres with sustained slopes of 20% or greater.

Areas of two (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.

Areas along coastal wetland which are subject to severe erosion or mass movement, such as steep coastal bluffs.

## SECTION V: STANDARDS FOR THE ZONES

### ZONE A (See applicable General Regulations and Standards)

#### A. LAND USE STANDARDS

1. The following uses are not permitted:
  - a) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
  - b) Non-maritime industry
2. All other uses are permitted subject to lot, structure and performance standards.

#### B. LOT STANDARDS

1. Lot area minimum: 6500 square feet.
2. Shore frontage residential minimum: One Hundred Feet (100').

#### C. STRUCTURE STANDARDS

1. Set-backs (minimum):
  - a) 10' from edge of paved roadway; sidewalks must be provided (standards in Southwest Harbor Road Ordinance)
  - b) 10' from lot lines  
EXCEPTION: Construction permitted either on the lot line as an agreed common firewall, or set back at least 5' from the lot line, provided a firewall is used.
  - c) 75' from the upland edge of a coastal wetland";  
  
EXCEPTION: 25' for a non-residential structure
  - d) 75' from the upland edge of a wetland
  - e) 25' from the normal high-water line of an intermittent stream and 75' from a perennial stream (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained)
  - f) 75' from the shoreline of a tributary stream.
2. Height:
  - a) 30' maximum within 150' of the normal high-water line of the Harbor Shoreland Zone
  - b) 40' maximum within the rest of the Zone
3. Lot coverage:
  - a) 70% within 150' of the normal high-water line of a water body (coverage in this context includes all impervious non-vegetated surfaces)
  - b) no limit within the rest of the zone.

**ZONE B** (See applicable General Regulations and Standards)

**A. LAND USE STANDARDS**

All uses are permitted.

**B. MINIMUM LOT STANDARDS AREA**

Note: Minimum lot area requirements based on availability of utilities to the site

1. Minimum lot size:

- a. 40,000 sq. ft. (If Structures are serviced by Private Well and Private Septic System)
- b. 30,000 sq. ft. (If Structures are service by non-seasonal Public Water and Private Septic System)
- c. 20,000 sq. ft. (If Structures are serviced by Private Water and Public Sewerage)
- d. 15,000 sq. ft (If Structures are serviced by non-seasonal Public Water and Public Sewerage)

Exception: Minimum lot area within 250' of the high water line will be 40,000 square feet.

**C. STRUCTURE STANDARDS**

1. Minimum set-backs for all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks and signs:

- a) Lot lines – 15'
- b) State road – 55' from the centerline
- c) Town road – 20' from the edge of the right-of-way but not less than 35' from the centerline
- d) Private road – same as Town road if service to three or more lots

EXCEPTION: A 6' minimum setback from the edge of a vehicular way on a driveway.

2. Other Minimum set-backs for all structures:

- a) Upland edge of a wetland – 75'
- b) Intermittent stream (NHL) – 25'
- c) Perennial stream (NHL) – 75' (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
- d) Tributary Stream (NHL) – 75'

3. Height:

- a) 30' maximum within 250' of the normal high-water line
- b) 40' maximum within the rest of the zone

4. Individual Lot coverage: Includes structures only

- a. 10% if structures are serviced by private well and private septic system
- b. 12% if structures are serviced by non-seasonal public water and private septic system
- c. 15% if structures are serviced by private water and public sewerage
- d. 3,000 sq ft or 20%, whichever is greater, if structures are serviced by non-seasonal public water and public sewerage

EXCEPTION:

- a. 20% within 250' of the normal high-water line of a water body (includes structures and non-vegetated surfaces)
  - b. 40% lot coverage by structures for commercial uses
    1. May include multi-family structures in excess of three dwelling units.
    2. Seasonal cottages with occupancy less than six months.
    3. Property to be in common ownership
    4. No condos or condo associations allowed
    5. All performance standards must apply
5. Minimum Shore Frontage
- A) Residential Use - 150'
  - B) Non-Residential Use - 200'

## COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE

(See applicable General Regulations and Standards)

### A. LAND USE STANDARDS

The following uses are not permitted:

- 1) Hotels, motels, boatels, inns or similar transient accommodation
- 2) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
- 3) Non-maritime industrial use
- 4) Marinas
- 5) New residential use

#### EXCEPTION:

- a. Commercial Fishery/Maritime Activity Uses: No more than two (2) residential units per lot are permitted as accessory uses provided that the following criteria are met:
  - The existing use has been established for at least 2 years;
  - The residential units must not be on the 1st (ground) floor; and
  - The total area of the building(s) devoted to all accessory uses is less than 40% of the total area of the building(s).
- b. Other Commercial Uses: No more than one (1) residential unit per lot is permitted as an accessory use provided that this unit meets the same criteria established above in #a.

### B. LOT STANDARDS

- Minimum lot size:     a. none for a Commercial Fisheries/Maritime Activity Use  
                                  b. 6,500 sq. ft. for other uses

### C. STRUCTURE STANDARDS

#### 1. Set-backs (minimum):

- a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
- b) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.

- c) No setback from the normal high-water line of a water body, a tributary stream, perennial stream, or the upland edge of a wetland, Except:
  - Residential structure – 75', unless the structure contains a residential accessory use to the commercial use in which case the residential use shall be setback at least 25 feet.
  - Non Commercial-Fisheries/Maritime Activity structure 25'(if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).

#### 2. Height: 25' maximum

EXCEPTION: 35' on land only, if more than 50% of the floor area is occupied by a Commercial Fishery Activity.

#### 3. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

## Section V: MARITIME ACTIVITY ZONE

(See applicable General Regulations and Standards)

### A. LAND USE STANDARDS

The following uses are not permitted:

- 1) Hotels, motels;
- 2) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
- 3) Non-maritime industrial use
- 4) New residential use on the North side of Shore Road

#### EXCEPTION:

Commercial Uses: New Residential units are permitted on the North side of Shore Road provided that the following criteria are met:

- That the residential units must not be on the 1<sup>st</sup> (ground) floor;
- Residential use shall not be the primary use of the lot
- The total area of the building(s) devoted to all residential and accessory uses shall be less than 50% of the total area of the buildings(s).
- If the primary use of the lot is vacated for more than one (1) year, any and all residential units on the lot shall not be occupied until a primary, non-residential use of the lot is installed; and
- The Lot and structure Standards set forth below are met.

### B. LOT STANDARDS

Minimum lot size:	6,500 sq. ft. per use
Minimum Shore Frontage:	1) None for Maritime Activity uses
	2) 150 feet per use for all other uses

### C. STRUCTURE STANDARDS

#### 1. Set-backs (minimum):

- a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
- b) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.

- c) Maritime Activities: None from the normal high-water line of a water body, a tributary stream, perennial stream, or the upland edge of a wetland if use is water dependent.
- d) Other Commercial Uses: 25' from the shoreline, (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained.



- e) All other Structures: 75' from the shoreline. (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
- 2. Height: 25' maximum.
- 3. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

## HARBOR ZONE (See applicable General Regulations and Standards)

### A. LAND USE STANDARDS

1. The following uses are not permitted:
  - a) Multi-family residential use
  - b) Hotels, motels, boatels, inns or similar transient accommodation
  - c) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
  - d) Non-maritime Industrial use
2. No more than one (1) residential unit per lot is permitted as an accessory use to a commercial use provided that the following criteria are met:
  - The existing use has been established for at least 2 years;
  - The residential units must not be on the 1st (ground) floor; and
  - That the total area of the building(s) devoted to all accessory uses is less than 40% of the total area of the building(s).

### B. LOT STANDARDS

1. Minimum lot size:

Non-residential use:	1)	10,000 sq. ft./sewered lots
	2)	20,000 sq. ft./unsewered lots
Residential use:		20,000 sq. ft.
2. Minimum shore frontage for residential use: 100'

### C. STRUCTURE STANDARDS

1. Minimum set-backs for all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks and signs:
  - a) Lot lines – 15'
  - b) State road – 55' from the centerline
  - c) Town road – 20' from the edge of the right-of-way but not less than 35' from the centerline
  - d) Private road – same as Town road

EXCEPTION: A 6' minimum setback from the edge of a lane which provides access to a single family residential unit on a second lot.

  - (I) For traffic safety reasons, the area between the edge of the right-of-way and the structure setback line must indeed a vegetated strip with a minimum depth of 6 feet along the nearest edge of the right-of-way. Access driveways shall be permitted to cross the vegetative strip.
  - (II) If parking lots for multi-family residential or for any non-residential uses are placed within the setback area, the vegetative strip shall be densely planted with shrubs or bushes, or a berm constructed, so that the height of the buffer shall be of at least three feet, but shall not obstruct the vision of vehicles at any access driveway
  - (III) Any requirement for landscaped buffering required in SECTION VI. A. is a separate requirement and is in addition to the vegetative strip noted above.
2. Minimum set-backs for structures:
  - a) Upland edge of a wetland – 75' (exception: non-residential structure – 25')
  - b) Intermittent stream (NHL) – 25'
  - c) Perennial stream (NHL) – 75' (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
  - d) Tributary Stream (NHL) – 75'
3. Height: 25' maximum  
EXCEPTION: 30' on land only, if more than 50% of the floor area is occupied by a maritime Activity
4. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

## RESIDENTIAL SHORELAND ZONE (See applicable General Regulations and Standards)

### A. LAND USE STANDARDS

1. The following uses are not permitted:
  - a) Commercial
  - b) Industrial
  - c) Governmental
  - d) Institutional
  - e) Multi-family residential
2. Lobster, scallop, mussel and similar commercial fishing activities may be considered a home occupation provided:
  - a) The activity involves only one boat less than 40'; and
  - b) The operation employs not more than 2 persons including the owner.

### B. LOT STANDARDS

1. Minimum lot size: 40,000 sq. ft.
2. Minimum shore frontage: 150'

### C. STRUCTURE STANDARDS

1. Set-backs (minimum):
  - a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
  - b) 55' from the centerline of a State roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
  - c) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.
  - d) 100' from the normal high-water line of a great pond
  - e) 75' from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
2. Height: 30' maximum
3. Lot coverage: 20% maximum (coverage in this context includes all non-vegetated surfaces).

## RESOURCE PROTECTION ZONE

(See applicable General Regulations and Standards)

### A. LAND USE STANDARDS

1. No residential, commercial, or industrial development is permitted.
2. Non-residential facilities for educational, scientific, nature interpretation or other governmental or institutional purposes are permitted.

### B. LOT STANDARDS

Minimum shore frontage: 150'

### C. STRUCTURE STANDARDS

1. Set-backs (minimum):
  - a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
  - b) 55' from the centerline of a roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
  - c) 250' except for uses permitted by Section A. above, in which case the setback requirements are from the shoreline: 100' from a great pond or 75' from other water bodies, tributary streams and wetlands.
2. Height: 20' maximum
3. Lot coverage: 20% maximum (coverage in this context includes all impervious non-vegetated surfaces).

## SECTION VI: PERFORMANCE STANDARDS

### A. BUFFERING

#### 1. PURPOSE

The Ordinance allows a mixture of land uses to occur in all zones. For this reason, a buffer is required to protect residential properties from adjoining unlike uses or activities. The buffer is required to minimize the impact of buildings and/or activities that could cause a nuisance; to block or soften lights (including car lights or reflections of the sun); to reduce noise; to preserve privacy; and to reduce smells and dust. Activities which may cause a nuisance include but are not limited to the movement and parking of heavy equipment, trucks, dumpsters, and cars; loading and off-loading; exterior bulk storage such as lumber or gravel; and the sheer size of very large buildings, such as storage sheds.

The amount of buffering required depends on the impact the new use is likely to have on neighbors – low, medium or high.

#### 2. REQUIREMENTS

- a. Plantings shall be permanent. They shall be arranged and maintained so as not to obscure the vision of traffic.
- b. Buffering is required in the following situations:
  - 1) Non-residential and multi-family residential uses and structures (including parking areas, driveways, and roads) shall be buffered from adjacent residential and/or vacant lots.
  - 2) With the exception of development in Zone A and the Harbor Shoreland Zones, all existing and proposed non-residential and multi-family residential uses and structures (including parking areas) which occupy an aggregate of more than 4,000 square feet of land shall be buffered from roads. If the building is less than 2,500 square feet and is closer to the road than the parking, the building itself does not need to be buffered from the road. Free standing signs do not need to be buffered from roads.
  - 3) Any increase in impact/activity as described in the “purpose” paragraph above caused by the expansion of an existing use or structure shall require buffering of the expansion.
  - 4) Mining, sand and gravel extraction, landfills, timber harvesting operations, bulk storage areas, mobile home parks, electrical substations, and storage or collection of discarded automobiles will be buffered from all adjacent lots and roads in all zones.
- c. When a buffer is required, a landscaping plan must be submitted as part of the general site plan or as a separate drawing. This shall include:
  - 1) Owner’s name, lot number, date, scale, north arrow
  - 2) Existing and proposed buildings, structures, roads, driveways, and parking areas
  - 3) Adjoining roads and land uses
  - 4) Existing and proposed planted areas accompanied by a description of the trees, hedges, ground vegetation and other plant material including number and layout of trees, common or botanical names of plants, intended fully-grown heights above ground, distances between trees planted for screening purposes, and types of ground covering vegetation.

- 5) Details of the construction of any fences, trellises, walls, berms or sunken fences (ditch-and-wall) must be included.

### 3. IMPACT OF USE

#### a. Definition of Impact Level:

- 1) Level 1 – Low: The impact of the proposed activity on adjoining properties will be minimal. Consequently, buffering is called for only around parking areas and driveways.
- 2) Level 2 – Medium: There will be increased impact in terms of noise, lights and loss of privacy. Therefore a greater depth of buffering is called for to screen all areas where the new activity is to take place.
- 3) Level 3 – High: Activities which have serious impact on the quality of adjoining residential properties. These may include the following: New construction of large (or tall) buildings, parking lots, uses that are likely to increase traffic movement, frequent use of large trucks, or exterior storage of goods. In such cases, greater buffering will be required, (both for buildings and for parking lots and driveways), and will have to be deeper or more dense than what is called for under Levels 1 and 2.

#### b. Determination of Level of Impact

The Planning Board will determine the level of impact based upon the completed applications. In making this determination the Planning Board will consider several factors including, but not limited to: The use, the number of parking spaces, size of structure, hours of operation, number of employees and impact of vehicular traffic.

### 4. STANDARDS

- a. A buffer should be deep enough, high enough, and sufficiently dense to meet the objectives described in 1 (Purpose). Note that the purpose includes not only screening traffic and other activities on the applicant's site, and large buildings, but also preserving the privacy of adjoining residents (or potential residents).
- b. In the case of existing natural tree growth, this may therefore need to be supplemented by additional low-level planting, hedges, fences or berms. Existing low-level growth may need to be supplemented by trees.
- c. The buffer may include fences, hedges or berms designed to ensure that the purpose is met. It is not intended that landscaped buffering should be required in situations where it would interfere with neighbors' views of the water.
- d. Note that the combined screening effect of trees, low-level planting, hedges, fences or berms is intended to be effective all year round. Plant material should not all be of deciduous types. Recommended varieties of trees and shrubs include white cedar, pine, spruce, hemlock, columnar arborvitae and juniper. Illustrations of plant materials and buffering designs are available in the Town Office.

### 5. EXECUTION AND MAINTENANCE

- a. The Buffering Plan shall be implemented as required before commencement of the permitted use unless the CEO determines that due to the season, weather or other circumstance the buffering cannot be completed. The CEO shall then specify the date upon which the buffering shall be in compliance.
- b. The ongoing maintenance of the approved landscape plan is the responsibility of the property owner. The signature of the applicant on the permit application denotes agreement to this requirement.

6. CONSERVATION COMMISSION

The Planning Board may refer landscaping plans to the Conservation Commission for their opinion before granting approval.

B. CLEARING or REMOVAL OF VEGETATION STANDARDS OTHER THAN TIMBER HARVESTING

1. Resource Protection Zone

- a. In a Resource Protection Zone abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75' inland from the normal high-water line, except to remove safety hazards.
- b. Elsewhere, the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in the Zone.

2. In Shoreland Zone areas other than those described in Section B.1 above

- a. A strip of land extending 100' from the normal high-water line of any great pond and 75' from any water body, tributary stream, or the upland edge of a wetland, shall be preserved as a buffer strip of vegetation, except to allow for the development of permitted uses, according to the following rules:
  - 1) There shall be no cleared opening greater than Two Hundred Fifty (250) sq. ft. 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 shrub crown. However, a footpath not to exceed 10' six (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.
  - 2) 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 purposes of Section (b)(2)(a)(2), a well distributed stand of trees adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA shall be defined as maintaining a rating score of 24 or more in each 25' x 50' rectangular (1250 square feet) as determined by the following rating system;

Diameter of Tree at 4 1/2'  
Above Ground Level Points

2 - < 4 inches	1
4 < 8 inches	2
8-12 inches	4
12 inches 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 Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;

- (v) Where conditions permit, no more than 50% 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 VI.B.a.2 "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

- 3) Notwithstanding the above provision, no more than 40% of the total volume of trees 4" or more in diameter, measured 4 1/2' above ground level, may be removed in any 10 year period.
  - 4) In order to protect water quality and wildlife habitat, existing vegetation under 3' 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 allowed by this Ordinance.
  - 5) Pruning of tree branches on the bottom 1/3 of the tree is allowed.
  - 6) 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.
- b. At distances greater than 100' from the shoreline of a great pond and 75' from the shoreline of other water bodies, tributary stream or upland edge of a wetland:
- 1) There shall be permitted on any lot in any 10 year period, selective cutting of not more than 40% of the volume of trees 4" or more in diameter measured 4 1/2' above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. Volume may be considered to be equivalent to basal area.
  - 2) 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 sq. ft., whichever is greater, including land previously cleared.  
EXCEPTION: Shall not apply to the Residential Shoreland Zone.

- 3. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- 4. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section VI (B).

### C. DRIVEWAY AND DRIVEWAY OPENING STANDARDS

- 1. A driveway is a vehicular way within a lot. There may be more than one driveway on a lot.
- 2. The width of the vehicular way shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted to the development.
  - a. RESIDENTIAL DRIVEWAY:
    - 1 – 2 dwelling units no minimum
    - 3 – 10 dwelling units 9 feet
    - Over 10 dwelling units 18 feet



- b. NON-RESIDENTIAL DRIVEWAY minimum width: 18' (10' for one-way flow)

EXCEPTION: 10' wide driveways are permissible for 2-way traffic when the driveway is not longer than 50', it provides access to not more than 6 spaces, and sufficient turning space is provided so that vehicles need not back into a public street.

- c. Any driveway serving non-residential uses shall have a junction to the road conforming to the Road Standards in the Southwest Harbor Road Ordinance, SECTION VII, C.

3. SETBACK STANDARDS:

- a. No part of any driveway surface shall be located within a minimum of Six feet (6') of a side property line. The Planning Board may permit a driveway serving adjacent sites to be located within the 6' area of the side property line between the sites.
- b. The driveway surface shall be set back at least One Hundred feet (100') from the normal high-water line of a great pond, Seventy Five feet (75') from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland;

EXCEPTION: If the Planning Board determines that no reasonable alternative exists, the One Hundred feet (100') and Seventy Five feet (75') setbacks may be reduced to Fifty feet (50'), but appropriate techniques to prevent sedimentation must be approved (the installation of settling basins, the effective use of additional ditch relief culverts and/or turnouts placed to avoid sedimentation of the water body, tributary stream or wetland).

- c. On slopes of greater than 20% the driveway setback shall be increased by 10' for each 5% increase above 20%. This paragraph shall not apply to approaches to water crossings, to driveways that provide access to permitted structures, or to facilities located nearer to the shoreline due to an operational necessity.

4. CURB CUT STANDARD

There shall be not more than one ingress and one egress in any One Hundred feet (100') of a lot's road frontage.

- 5. Any driveway over 500' in length may be required to be of greater width and/or include turn-outs as recommended by the Fire Chief of Southwest Harbor.
- 6. New driveways are prohibited in a Resource Protection Zone except to provide access to permitted uses within the Zone. A driveway may also be approved by the Planning Board in a Resource Protection Zone upon a finding that no reasonable alternative route or location is available outside the Zone. When a driveway is permitted in a Resource Protection Zone, the driveway shall then 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.
- 7. Any new driveway opening onto a Town way must obtain a "Road Opening" permit from the Town. A new driveway opening onto a State road must obtain the necessary permits from the State, or a letter from the State saying that the permits are not needed.
  - a. The Town and State roads must be returned to their original condition upon completion of the driveway opening construction.
  - b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.
  - c. The Town Road Superintendent shall be notified of the date of construction of the driveway opening on both a Town and a State Road.
- 8. Any new driveway opening off a private road may require a culvert as determined by the CEO or Public Works Director, sized accordingly to the SWH Road Ordinance standards. The owner of

the property being served by the driveway shall be responsible for the installation, maintenance and future replacement. (5-4-10)

9. Drainage Standards:

In order to prevent driveway surface drainage from directly entering water bodies, tributary streams or wetlands:

- a. Driveways shall be design, constructed and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- b. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

10. Ditch Relief Culverts, Drainage Dips and Water Turnouts Design in Shoreland Zone

Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the driveway or ditch. To accomplish this, the following shall apply:

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the driveway at intervals no greater than indicated in the flowing table:

Grade (Percent)	Spacing (feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
- c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the driveway.
- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

11. Driveway Grade Limitation in Shoreland Zone

Driveway grades shall be no greater than ten (10) percent except for segments or less than two (200) feet.

12. Maintenance Standards in the Shoreland Zone

- a. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

- b. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with Section VI (D) Erosion and Sedimentation Control Standards.

#### D. EROSION and SEDIMENTATION CONTROL STANDARDS

1. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions shall require a soil erosion and sedimentation control plan in accordance with the current Maine Erosion & Sediment Control BMP'S (Best Management Practices). That plan shall be submitted to the permitting authority for approval, and shall include, where applicable, provisions for:
  - a. mulching and re-vegetation of disturbed soil
  - b. temporary runoff control features such as hay bales, silt fencing or diversion ditches
  - c. permanent stabilization structures such as retaining walls or riprap (5-4-10)
2. Development shall be designed to fit with the topography and soils of the site, so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily stabilized as soon as possible, but no later than one (1) week from the time it was last actively worked, and permanently stabilized within nine months of the initial date of exposure by use of riprap, sod, seed and mulch, or other effective measures. In addition:
  - a. Where mulch is used, it shall be applied at a rate of at least 1 bale per 500 sq.ft. and shall be maintained until a catch of vegetation is established.
  - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c. Additional measures shall be taken where necessary in order to minimize siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways 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 rip-rap.

#### E. EXTERIOR LIGHTING STANDARDS

1. Exterior lighting shall be designed to minimize the adverse impact on neighboring properties and the traveling public.
2. Exterior lights shall be appropriately shielded to prevent direct light from being visible outside the property line. Luminance will not exceed 0.1 foot candles at the property line.
3. Parking area lighting, display lighting, and spotlight type fixtures attached to buildings shall be shielded, and located and maintained so as not to create or constitute a hazard or nuisance.

F. FILL and EXCAVATION STANDARDS

1. A fill or excavation permit is not required for the movement of less than 100 cubic yards on a site in any twelve (12) month period. Fill and excavation activities are prohibited within 75 feet, horizontal distance, of the normal high-water line of a stream.
2. A fill or excavation permit is required for the moving of 100 cubic yards or greater of inert fill if the operation is not associated with permitted construction.
3. Upon completion of work, the permit shall require the site to be properly graded (not steeper than 2:1 or such lesser slope as may be necessary to prevent erosion) and to be re-vegetated.

G. FIRE PROTECTION STANDARDS

Plans for transient accommodations, marinas, nursing homes, convalescent centers, multi-family developments, hospitals, schools, theaters, mercantile developments over 3000 sq.ft., business occupancy of 2 or more stories, etc. shall be approved by the State Fire Marshal's Office.

H. FLOOD HAZARD AREA STANDARDS

1. A Flood Hazard Development Permit must be obtained from the Town before any change caused by individuals or entities to improved or unimproved real estate begins within any areas of special flood hazard identified on the Federal Insurance Rate Maps (FIRM) for Southwest Harbor.
2. The definition of "any change" includes but is not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; the storage, deposition, or extraction of materials; public or private sewage disposal systems or water supply facilities; and the placement of manufactured homes.

I. HANDICAPPED ACCESS STANDARDS

Plans for public accommodation (places of public congregation and/or employment as defined in Title 5 MRSA Paragraph 4553) and public housing shall be approved by the State Fire Marshal's Office.

J. HEAVY COMMERCIAL or INDUSTRIAL POLLUTANT STANDARDS

1. Dangerous materials to be subject to State of Maine codes and regulations.
2. Dust, dirt, fly ash, smoke, gases, fumes, radiant heat and glare shall not be emitted so as to endanger public health and safety, enjoyment of other property, or to constitute air pollution.

K. NOISE STANDARDS

1. No noise which is objectionable due to volume, intermittence, beat frequency or shrillness shall be transmitted outside the lot where it originates with the exception of time signals, vessels, and warning devices and noise necessarily involved in the construction or demolition of buildings and other structures.
2. The Planning Board reserves the right to determine if noise from a proposed project or an expansion of a use will be "objectionable". A majority vote of the Board is required for this determination.
3. The Code Enforcement Officer may determine that noise from an approved project has become a nuisance.

## L. PARKING and LOADING STANDARDS

### 1. GENERAL STANDARDS FOR PARKING SPACES

- a. The parking standards in this ordinance are to be satisfied by off-street parking (on-site or off-site).
- b. Standards for additions to a use or a change in use.
  - 1) New commercial uses in Zone A may be added without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Existing commercial uses in Zone A may be expanded or changed without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Elimination of any parking spaces or any changes in shape or size of the structure footprint(s) will require full compliance with all parking standards.
  - 2) Except for commercial uses in Zone A, any additions to a use or a change in use, will require compliance with the parking and/or loading standards for the existing use, the addition or the change in use. Those land uses which are unable to comply with the above will provide as much of the parking and loading for the existing use as they can, and all the additional parking and loading required by the addition or use change.

EXCEPTION: Marinas are an exception to this rule: all the required parking must be provided.

### 2. STANDARDS FOR PARKING SPACE(S) BY USE

- a. Automobile shops (sales, parts, body, rental):
  - 1 space per 200 sq. ft. of sales area plus
  - 3 spaces per service bay plus
  - 1 space per 3 employees plus
  - 1 space for each 3,000 sq. ft. of open sales lot area devoted to the sale, display and rental of vehicles
- b. Health Institutions:
  - 1 space per 3 beds
  - 1 space per 2 employees
- c. Hotels, inns, cabins, cottages, etc:
  - 1 space per 1 sleeping room
  - 1 space per 2 employees
- d. Maritime activities – commercial and recreational:
  - 1 space per 4 boat berths and/or 1 space per 4 moorings;
  - 1 space per 4 boat passengers of the rated passenger capacity of vessels carrying passengers for hire;
  - 1 space per 2 employees; and
  - 1 space per 20 berths and moorings for dedicated drop-off areas required at DocksideMaritime activities – industrial:
  - 1 space per 2 employees
- e. Nursery or Greenhouse
  - 1 space per 1,000 sq. ft., of floor area, plus one space per 2,000 sq. ft. of land area used for retail sales
- f. Offices (including medical) and public buildings:

- Zone A and Shoreland Zones – 1 space per 500 sq. ft. of gross floor area
- All other zones – 1 space per 200 sq. ft. of gross floor area
- g. Residential Unit:
  - Single family unit – 2 spaces per unit
  - Single family unit with accessory residential unit – 3 spaces
  - Multi-family units – 2 spaces per unit
- h. Restaurants, other eating and drinking establishments:
  - Zone A and Shoreland Zones – 1 space per 6 seats; 1 space per 4 employees
  - All other Zones – 1 space per 4 seats; 1 space per 2 employees
- i. Retail stores including service (Laundromats, etc.):
  - Zone A and Shoreland Zones – 1 space per 500 sq. ft. of floor area accessible to the public
  - 1 space per 4 employees
  - All other zones – 1 space per 200 sq. ft. of floor area accessible to the public
  - 1 space per 2 employees
- j. Schools:
  - 1 space per classroom and 1 space per 2 employees
- k. Theaters, churches, and other assembly places:
  - Zone A – 1 space per 200 sq. ft. of gross floor area
  - All other zones – 1 space per 100 sq ft of gross floor area
- l. Warehouses and storage facilities:
  - 1 space per employee
  - 1 space per 10 storage units
- m. Any use whose parking standards are not specifically detailed shall provide parking equivalent to that use whose characteristics are most similar.

3. **LOADING BAY STANDARDS**

- a. Loading facilities shall be located entirely on (or as close as possible to) the same lot as the building or use to be served, so that trucks, trailers, and containers for loading or storage shall not be located upon any Town way.
- b. The following minimum off-street loading bays shall be provided and maintained in the case of new construction, alterations, and changes of use:
 

less than 2000 sq. ft. =	not required
2000 – 15,000 sq. ft. =	1 bays
15,001 – 30,000 sq. ft. =	2 bays
30,001 – 50,000 sq. ft. =	3 bays
more than 50,000 sq. ft. =	4 bays
- c. Minimum loading bay size: 12' wide by 50' long by 14' high.

4. **PARKING AREA DESIGN STANDARDS**

- a. Specifications for layout of parking areas shall be similar to those found in the most recent “Architectural Graphic Standards” or a similar publication.
- b. The minimum parking space shall be 9 1/2' by 18'. (Spaces for a vehicle and boat trailer and/or a recreational vehicle shall be 40 feet long.) The spaces must be delineated for all but single family uses.
- c. Aisle width:
  - 24' two way
  - 16' one way only for 60 degree parking
  - 12' one way only for 45 & 30 degree parking
- d. The layout and design of vehicular and pedestrian ways, including walkways, interior drives, and parking spaces, shall provide for safe general interior circulation, separation

- of pedestrian and vehicular traffic, service traffic, and loading areas.
- e. Required setbacks for parking areas:
    - 1) In the Shoreland Zones, parking areas shall meet the shoreline setback requirements for structures for the Zone in which such areas are located, except that in the CFMA and MA zones and Zone A, parking areas shall be set back at least 25' from the normal high-water shore-line.
    - 2) In all zones the lot line setback is that which is necessary to satisfy the design standards, but no parking area shall be closer to the lot line than 6' except abutting non-residential parking areas in Zone A.
  - f. Non-residential and multi-family residential off-street parking and loading areas, where not enclosed within a building, shall be buffered as described in SECTION VI. Paragraph A. Buffering and Landscaping.
  - g. Parking areas shall be planted with canopy trees and shrubs within the area. There shall be one tree planted for every 8 spaces. This requirement applies to all spaces when an area is expanded.
  - h. The site layout shall provide for adequate location, number, and control of access points and shall incorporate adequate site distance and turning lanes where justified by existing and projected traffic flow. There shall be not more than one ingress and one egress in any 100' of road frontage. The ingress and egress shall meet the standards of the Maine Department of Transportation. When required, MDOT Entrance Permits must be obtained before approval.
  - i. Access points from a public road shall be so located as to minimize traffic on local streets of a primarily residential character.
  - j. All parking area entrances and exits shall be kept free from visual obstructions higher than 3 feet above street level for a distance of 25 feet measured along the intersecting entrance/exit and street lines in order to provide visibility for entering and leaving vehicles.
  - k. Provision shall be made for providing and maintaining convenient and safe emergency vehicle access at all times.
  - l. The areas shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.
  - m. Parking areas shall be arranged so that vehicles do not back onto any road.
  - n. Parking spaces shall be delineated and planted as required and made available for use prior to the commencement of the permitted use.
5. OFF-STREET/OFF-SITE PARKING shall be considered accessory to the principal use and shall be permitted only when parking requirements cannot be met on-site. The following criteria shall apply to an off-site area:
- a. All of the requirements for an on-site parking area.
  - b. The distance between the proposed off-site parking area must be a reasonable and convenient distance for the proposed user.
  - c. The proposed access route between the off-site parking area and the site must provide for safe pedestrian and vehicle traffic.
  - d. Drop-off areas shall be provided at the site and the off-site parking area.

## M. ROAD STANDARDS

### 1. PURPOSE

Provision shall be made for vehicular access and circulation in such a manner as to safeguard against hazards to traffic and pedestrians on existing roads and within a development, to avoid traffic congestion on any road, and to provide safe and convenient circulation.

2. ROAD DESIGN STANDARDS

- a. Any road intended for adoption by the Town as a public road shall be designed and constructed to the specifications of the Road Ordinance of the Town of Southwest Harbor, 1990 and as amended.
- b. New private roads shall be designed according to one of the following standards.
  - 1) Access to one single family residential use on a second lot  
Right-of-way: 12' minimum  
Vehicular way: 9' minimum
  - 2) Access to residential uses only, including rental cottages  
Right-of-way: 24' minimum  
Vehicular way: 9' minimum to access not more than 10 residential units  
18' minimum for access to more than 10 residential units
  - 3) Access to all uses  
Right-of-way: 30' minimum (36' minimum if the vehicular way is to be 24' wide)  
Vehicular way: 20' minimum (not more than 15% of the vehicles or combination of vehicles of gross weight of more than 12,000 pounds.)\*

24' minimum (if more than 15% of the total traffic generated by any commercial and/or industrial use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds, the way must meet the road construction specifications as described in the Southwest Harbor Road Ordinance)

\*The Planning Board reserves the right to make the determination that if more than 15% of the total traffic generated by all existing uses on the street plus the new use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds, the proposed use will be permitted only if the street is improved to meet the Town's road construction standards.

- c. Existing roads or new roads where they are sited on a right-of-way existing as of May 2, 1994 must comply with the following standards.
  - 1) If the right-of-way is less than 16', only one single family residential use is permitted per undeveloped lot of record as of May 3, 1993. If there is existing development, on the right-of-way, only additional single family residential use is permitted. The vehicular way shall have a 9' minimum width.
  - 2) If the right-of-way is 16' or greater, but no wider than 26', only residential expansion, is permitted. The vehicular way shall be as specified under 2.b.2) above.  
Exception: In Zone A only. Public parking areas may be accessed by Town roads provided that:
    - 1) R. O. W. is a minimum of 22' in width
    - 2) Travel way is a minimum of 16' in Width
    - 3) If the right-of-way is 26' or wider, then all development can occur and the vehicular way shall be as specified under 2.b.3) above.
- d. All private roads except the road providing access to a single family residential use on a second lot must meet the design specifications in the Southwest Harbor Road Ordinance, Section VII.B.
- e. Road banks shall be no steeper than a slope of 2:1, and shall be graded and stabilized in accordance with the standards for erosion and sedimentation control contained in Section



VI (D), Erosion and Sedimentation Control Standards.

- f. In order to prevent road surface drainage from directly entering water bodies, tributary streams and wetlands, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty feet (50') plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high water-line of a water body, tributary stream or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- g. Ditches, culverts, bridges, dips, water turnouts, catch basins and other storm water runoff control installations associated with roads 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 and shall be maintained on a regular basis to assure effective functioning.
- h. Ditch relief (cross drainage) culverts, drainage dips and water turnouts in the Shoreland Zone shall be installed in a manner effective in directing drainage onto un-scarified buffer strips before the flow gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:
  - 1) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:
 

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21 +	40
  - 2) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
  - 3) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road.
  - 4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.
- i. Road grades in the Shore Land Zone shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

3. SETBACK STANDARDS

- a. Right-of-way setbacks from structures
  - Town and Private Roads: 20' minimum – (the centerline of the road must be a minimum of 35' from the structure).

EXCEPTION: 6' minimum for a right-of-way which provides access to one single family residential use on a second lot.

- b. Road surface setback
  - 1) No part of any roadway surface shall be located within 6' of a side property line, or the right-of-way lines except road surface providing access to a single family residential use on a second lot.
  - 2) If the road surface is within 15' of the lot line of a residential use, a buffer must be provided (See BUFFERING STANDARDS, Paragraph A. of this SECTION). The Planning Board will determine the adequacy of the buffer as a deterrent for noise and dust in relation to the use of the road.
  - 3) Existing public roads may be expanded within their legal road right-of-way regardless of their setback from the a water body tributary stream or wetland.

Roads shall be set back at least one-hundred (100) feet from the normal high-water line of a great pond, and seventy-five (75) feet from the normal high -water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

- 4) New roads are prohibited in a Resource Protection Zone except that the Planning Board may grant a permit to construct a road to provide access to permitted uses within the Zone. A road may also be approved by the Planning Board in a Resource Protection Zone upon a finding that no reasonable alternative route or location is available outside the Zone. When a road is permitted in a Resource Protection Zone, the road shall then be set back as far as practicable from the normal high-water line of a water body, stream, or upland edge of a wetland.
- 5) Any new road opening onto a Town road must obtain a "Road Opening" permit from the Town. A new road opening onto a State road must obtain the necessary permits from the State or a letter from the State saying the permits are not needed.
  - a. The Town and State roads must be returned to their original condition upon completion of the road opening construction.
  - b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.
  - c. The Town Road Superintendent shall be notified of the date of construction of the road opening on both a Town and a State Road.

## N. SEWAGE DISPOSAL STANDARDS

- 1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:
  - a) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet,

- horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and
- b) A holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

2. When the public sewer system is to be used, a permit must be obtained from the Southwest Harbor Water & Sewer District (the District). This permit plus payment must be filed in the Town Office before a building permit can be issued. The sewer permit certifies compliance with the District policy.

## O. SIGN REGULATION STANDARDS

1. No person, firm or corporation shall hereafter erect, hang, place, or alter the size or shape of an existing sign or sign structure of any kind without a permit having been issued in conformance with the provisions of this Ordinance.

The following signs are exempt from the provisions of this Ordinance:

- a. Any sign which was lawfully in existence prior to June 29th, 1992; provided, however, any change in size, construction, location, or lighting of said sign shall constitute a new sign and such change shall be governed by the terms of this Ordinance.
  - b. Customary holiday decorations.
  - c. House addresses, family name signs, and no trespassing signs.
  - d. Traffic control signs.
  - e. Public safety signs.
  - f. A flag signifying that a business is open, or a national flag, provided it does not cause a hazard.
  - g. Directional signs solely indicating ingress and egress placed at driveway locations, containing no advertising material and having a display area not exceeding three (3) square feet.
  - h. An identification sign erected over or by the doorway or entrance to the building which does not exceed 10% of the area doorway or entrance.
  - i. Real estate signs, not to exceed six (6) sq.ft. in area, attached to a building or free standing, may be erected advertising the sale, lease, or rental of a premises and shall be removed by the owner or agent when the property is sold or leased. (No larger Real Estate sign is permitted by this Ordinance.)
  - j. One development or construction sign not to exceed 32 square feet in area attached or free standing, may be erected provided such sign shall be limited to a general identification of the project and shall be removed within thirty days after completion of the project.
  - k. Permanent signs on vehicles regularly and customarily used to transport persons or property for the business.
2. Temporary signs excluding street banners, sandwich signs and signs within vehicles, are allowed without a permit for a period not to exceed thirty (30) days in any one calendar year for any one commercial premises or use, provided they comply with the Ordinance.
    - a. The size of such sign may not exceed twelve (12) square feet.
    - b. The sign or signs are to be promptly removed by the person posting them.

- c. Street banners for special events may be posted upon receipt of a written permit. The size of a street banner shall be no larger than 2' in height and 50 sq.ft. in area. The applicant shall provide evidence of liability insurance protection for any damage resulting from the placement of said street banner. The applicant shall remove the street banner upon termination of the permit.
- 3. No existing or new sign shall be permitted to cause a sight, traffic, health or welfare hazard, or to result in a nuisance due to illumination, placement, or manner of construction. The sign must be kept clean, neatly painted.
- 4. All signs which no longer advertise a bonafide business, product sold, activity or campaign being conducted, or public notice, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or premises upon which such sign may be found.
- 5. Awnings are allowed without a permit, but they must be at least 7' above sidewalks and cannot extend over a road surface. Signs with lettering no greater than 6" are permitted on the "fringe" of the awnings, but a sign permit from the Town must be obtained. Each sign counts towards the total of permitted signage. No illuminated awnings are permitted.
- 6. STANDARDS:

#### NUMBER OF SIGNS

- a. Free-standing signs shall be limited to one (1) per site.
- b. A business may have 6 signs with a maximum total area of 72 sq.ft. (EXCEPTION: limited to 50 sq.ft. if the name of the business also appears on a free-standing owner/tenant/lessee sign)
- c. A home occupation shall have only one (1) sign and it shall not exceed six (6) square feet.
- d. In the Residential Shoreland Zone, only 2 signs per premise are allowed.

#### SIGN AREA

- a. No single sign shall have a sign area exceeding 24 square feet on any one side, except in the Residential Shoreland Zone where it shall not exceed 6 square feet.
- b. No combination of signs on a free-standing structural support system shall have a sign area exceeding 32 square feet on any one side.
- c. On-building sign area may not be more than 10% of the total wall area to which it is attached.

#### HEIGHT OF SIGN

- a. No free standing sign shall extend higher than 10' above the ground, unless it is a multi-tenant sign for over 6 businesses.
- b. No sign attached to a building shall extend higher than the roof line.
- c. Roof signs may have a height of 2' or less and the top of the sign must not exceed the elevation of the top of the roof line upon which the sign is erected. No roof sign shall obscure the view of a natural vista as seen from any public park or public right-of-way.
- d. A sign attached to a structure by a bracket, which overhangs a public sidewalk or pedestrian walkway, must have a minimum clearance of 10' over the sidewalk and no part of the sign or bracket shall be any closer than 18" to the edge of the road.

#### SETBACKS

- a. No sign may be within a road right-of-way or a sidewalk.
- b. A sign must be set back 5' of the edge of the pavement, sidewalk, and/or lot lines.

#### ILLUMINATION OF SIGNS

- a. Signs shall only be illuminated by shielded non-flashing lights.

- b. No sign shall have blinking, moving, glaring, neon, or internal illumination, except those giving only public service information such as time, date, temperature, weather, or similar information

EXCEPTION: One (1) internally illuminated sign, displayed in a window, of any shape which fits within an area of 30" x 18" shall be permitted for commercial use within Zone A only. This sign may only be illuminated during the open hours of the business.

#### LEASEHOLDER SIGNS

For sites with an owner and tenant(s) and/or leaseholders, the following criteria applies:

- a. If there are not more than five tenants or lease holders (including the owner), a single free-standing sign may have a maximum height of 10', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.
- b. For six tenants or lease holders (including the owner) or more, the single free-standing sign may have a maximum height of 15', a maximum sign area width of 8', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.

#### OFFICIAL BUSINESS DIRECTIONAL (OBD) SIGNAGE

- a. State Law regulates the location of OBD signs within the width of the right-of-way of any road.
- b. Within Southwest Harbor, OBD signs are only allowed within the right-of-way of State roads (Route 102 and 102A).
- c. OBD signs must be non-reflective white on blue and 4' x 1'.

#### P. SOIL STANDARDS

1. All land uses shall be located on soils in or upon which the proposed uses or structure 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.
2. The Planning Board may determine that proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, may require a soils report based on an on-site investigation and may require it prepared by state-certified professionals. Proposed uses within the State defined Shoreland areas are required to submit a soils report. 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.
3. The report may be based upon any of the following relevant criteria:
  - a. The analysis of the characteristics of the soil and surrounding land and water areas;
  - b. Maximum ground water elevation;
  - c. Presence of ledge;
  - d. Drainage conditions; and
  - e. Other pertinent data which the evaluator deems appropriate.
4. The soils report may include recommendations for a proposed use to counteract soil limitations where they exist.
5. Reference shall be made to the GIS maps of Southwest Harbor soils and wetlands. (The maps are in the Town Office.)

#### Q. STORM WATER RUNOFF STANDARDS

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize off-site discharge.
2. Adequate provision shall be made so that surface waters shall not adversely affect neighboring properties, downstream water quality, potential for soil erosion, or the public storm drainage system. When necessary, the best available technology shall be used to minimize off-site storm water runoff, increase on-site storm water runoff, increase on-site infiltration, encourage natural filtration functions, simulate natural drainage systems, and minimize off-site discharge of pollutants to ground and surface water. The best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales.
3. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
4. Storm water runoff systems shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area

R. STREAM STANDARDS (perennial and non-perennial streams)  
Existing vegetation within 25' of the stream edge shall remain undisturbed.

S. VIBRATION STANDARDS  
If inherently and recurrently generated, it shall be imperceptible without instruments at lot boundaries. (This shall not apply to vibration resulting from activities aboard a vessel, on a pile supported pier, or involved in the construction or demolition of buildings.)

T. WATER QUALITY STANDARDS

1. No activity shall deposit on 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.
2. The following activities require a permit under the Natural Resources Protection Act (NRPA) from the Department of Environmental Protection if performed in, on or over any freshwater or coastal wetland, great pond, river or stream, or adjacent\* to said natural resources such 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;
  - d. Any construction, repair or alteration of any permanent structure.

\*DEP has defined "adjacent" to mean any land within the floodway of a river, stream or brook; or any land area within 100' of the NHL or upland edge of a coastal wetland, freshwater wetland, river, stream or brook.

U. WATER SUPPLY STANDARDS

When the Town water supply is to be used, a permit must be obtained from the Town of Southwest Harbor's Water Department. This permit plus payment (or a letter of intent to pay) must be filed in the Town Office before a building permit can be issued. The water permit certifies compliance with the Southwest Harbor Water Ordinance.

**SECTION VII: STANDARDS FOR SPECIAL ACTIVITIES**

A. AGRICULTURE

1. Spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001.
2. Manure shall not be stored or stockpiled within 100' of a great pond or within 75' of other water bodies, tributary streams, or wetlands. All manure storage areas must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
3. Within the shoreland zones, agricultural activities involving tillage of soil greater than 40,000 sq. ft., shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be a violation of this Ordinance.
4. There shall be no new tilling of soil within One Hundred feet (100') of the normal high-water line of a great pond, within Seventy Five feet (75') from other water bodies and coastal wetlands nor within Twenty Five feet (25') of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Ordinance 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 must be conducted in accordance with a Conservation Plan.

B. ARCHAEOLOGICAL and HISTORICAL SITES

1. Southwest Harbor has 6 prehistoric archeological sites and 2 listed historic buildings (the Claremont Hotel and "Raventhorp" house on Greenings Island). These sites are located on maps available in the Town Office.
2. Any proposed land use activity involving structural development or soil disturbance on or adjacent to these sites shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority.
3. The Planning Board shall consider comments received from the Commission prior to rendering a decision on the application.

C. BED and BREAKFAST

1. Definition: An owner occupied dwelling in which lodging or lodging and breakfast is offered to lodgers for compensation.
2. As a home occupation, it can have no more than three (3) bedrooms devoted to lodging purposes.
3. If more than three (3) bedrooms are used for lodging, the use is commercial.

D. CAMPGROUND

1. A Campground is defined as a plot of ground upon which two or more campsites are located, established or maintained for occupancy by recreational vehicles, tents or other camping units of the general public as temporary living quarters for recreational, educational or vacation purposes.
2. Campgrounds are subject to the minimum requirements imposed under State licensing procedures and the following specific limitations.
  - a. Shoreland campgrounds:
    - Minimum lot size: 5 acres
    - Minimum site size: 5,000 sq.ft. (net area)
    - Parking: 200 sq.ft. for each site
  - b. Inland campgrounds:
    - Minimum lot size: 5 acres
    - Minimum site size: 2,500 sq.ft. (net area)
    - Parking: 200 sq.ft. for each site
3. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of One Hundred feet (100') from the normal high-water line of a great pond, Seventy Five feet (75') from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland. Their setback shall be a minimum of 30' from lot lines and this setback area shall be a buffer.
4. The Planning Board may issue an approval of a campground conditional on the State license approval.

#### E. CAMPSITE

1. A campsite is defined as an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but may not be limited to a gravel pad, parking area, fireplace or tent platform.
2. The following must be met.
  - a. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone.
  - b. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back One Hundred feet (100') feet from the normal high-water line of a great pond and Seventy Five feet (75') feet 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 vehicles shall not be located on any type of permanent foundation except a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
  - d. The clearing of vegetation for the sitting of the recreational vehicle, tent or similar shelter in a Resource Protection Zone shall be limited to 1000 square feet.
  - e. A plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
  - f. When a recreational vehicle, tent or similar shelter is placed on-site for more than One Hundred-Eighty (180) consecutive days per year, all requirements for residential structures shall be met, including either a State approved subsurface sewage disposal system or public sewage facilities. Areas in shore land zones limited to One Hundred-Twenty (120) days.

#### F. 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 is not allowed in a Resource Protection Zone nor within Seventy Five feet (75') of a stream, except to provide services to a permitted use within the Zone, or 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.

#### G. HEALTH INSTITUTION

1. A facility for the aged or infirmed which provides living quarters and on-site staff providing care.
2. This is a commercial use.

#### H. HOME OCCUPATION

1. Home occupations are limited to those uses which must be conducted within a principal residential dwelling or one structure customarily accessory to this dwelling with the exceptions as noted below. All uses including the exceptions must be incidental and secondary to the use of the property for dwelling purposes and not change the essential residential character or appearance of such property.  
EXCEPTIONS: the seasonal sale of firewood and agricultural products.
2. Vehicular/motor repairs must not be carried out open to view. The outside storage of vehicles and parts associated with the business is not allowed.
3. Objectionable conditions such as noise, vibration, smoke, dust, odors, heat, glare, or electrical disturbances interfering with a neighbors' radio, television, etc. shall not be permitted of the home occupation.
4. The home occupation shall be carried on by any members of the family residing on the property and have no more than two additional non-residential employees.
5. The parking performance standards must be satisfied for both the residential use and the home occupation.
6. The home occupation shall not involve the parking of commercial vehicles. Overnight parking of refrigerated trucks is prohibited.

#### I. MARINA DEVELOPMENT

1. The land use shall comply with the land use, structure, and performance standards of this Ordinance.
2. The water use shall satisfy the applicable performance standards in this Section VII (N)
3. In addition to the information required under site plan review, marina permit applications must contain the following information for referral to the Harbor Committee:
  - a. A storm evacuation plan;
  - b. A plan and/or documentation demonstrating the integrity of the proposed docks during storms;
  - c. A harbor traffic impact study;
  - d. A relocation plan for any moorings displaced from the current Southwest Harbor Mooring Plan; and
  - e. An overlay of the Mooring Plan, showing the relationship of this facility to abutters, detailed moorings in the area and those required for the proposal, and the rigging for securement purposes.

J. MARITIME ACTIVITIES NOT LOCATED ON LAND

Those activities which have their principal use not located on land, must have their accessory uses which are on land comply with the applicable land use, structure, and performance standards of the zone in which they are located.

K. MINERAL EXPLORATION and EXTRACTION

1. A permit shall not be required for mineral exploration to determine the nature or extent of mineral resources if it shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 sq. ft. of ground surface. Mineral exploration is prohibited within 75 feet, horizontal distance, of the normal high-water line of a stream.
2. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitation.
3. All excavations, including test pits and holes shall be immediately capped, refilled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.
4. Mineral extraction may be permitted under the following conditions:
  - a. 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 d. Below.
  - b. Mineral exploration and extraction shall conform with the Erosion and Sedimentation Control and Storm Water Runoff Standards contained within this Ordinance.
  - c. No part of any extraction operation, including drainage and runoff control features shall be permitted within One Hundred feet (100') of the normal high-water line of a great pond, Seventy Five feet (75') 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 Seventy Five feet (75') of any property line, without written permission of the owner of such adjacent property.
  - d. Within 12 months following the completion of extraction operations at any extraction, site, which are 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 reclamation plan required herein, and the following:
    - 1) All debris, stumps, and similar material shall be removed for disposal in an approved location or buried on site. Only materials generated on-site may be buried or covered.
    - 2) The final graded slope shall be 2:1 or flatter.
    - 3) 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.
5. In addition to the above, the Planning Board may impose such conditions as necessary to minimize the adverse impacts associated with mineral extraction operation on surrounding uses and resources.

L. MOBILE HOME PARK

1. The regulations for mobile home parks under Title 30-A, MRSa Section 4358 shall apply to all areas of Southwest Harbor except the Shoreland zones. In these zones, the mobile home lot sizes cannot be less than the minimum for the zone.
2. Park lot size:

- a. The area reserved for road rights-of-way, the area for buffer yards, plus the area of all mobile home park lots.
  - b. If the Park is on Town sewer, an additional 10% of the above total Park size must be included for open space.
3. Mobile home lot size:
- a. Sewered – 6500 sq.ft.
  - b. Un-sewered: individual on site-subsurface septic system – 20,000 sq.ft.
  - c. Un-sewered: central on-site waste water system – 12,000 sq.ft.  
(the gross density of the park must be 20,000 sq.ft./lot)
4. Buffering: See SECTION VI. A. Buffering and Landscaping
5. All mobile homes manufactured before June 15, 1976, or not built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, US Code, Title 42, Chapter 70, shall be required to meet the safety standards for older mobile homes as adapted and listed in Appendix A, Maine’s New Mobile Home Park Law. (Source: A Guidebook for Local Officials, Office of Comprehensive Planning.

M. MOTEL, HOTEL, BOATEL, CABINS, COTTAGES, etc.

1. Definition: A building or group of buildings containing rooms which are used or rented for sleeping purposes by transients.
2. Motels, hotels, boatels are principal commercial uses. Cabins and cottages may be considered as principal commercial uses, or as accessory commercial uses to a principal residential or commercial use.
3. Efficiency Unit – Includes a food preparation area only serving that unit. If the occupant of the unit is in residence for more than 6 months, the unit must meet the minimum residential floor space requirement for each Zone and, except in Zone A the minimum lot size requirement under multi-family. (5-4-10)

N. PIERS, DOCKS, WHARVES, BRIDGES, OTHER STRUCTURES & Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland  
(For a Marina Development, also see Paragraph I in this SECTION)

1. Any permanent or temporary structure(s) shall require a permit subject to the following standards and an opinion from the Harbor Committee. \*
2. New permanent structures, and expansions thereof, extending over or below the shoreline shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act 38 M R S A section 480 C and the Army Corps of Engineers; a submerged lands lease from the Bureau of Public Lands, Department of Conservation; seasonal “temporary” structures require a permit only from the Army Corps.
3. Standards:
  - a. The structure(s) must be capable of withstanding storm winds and waves.
  - b. Structures shall not unreasonably interfere with navigation nor with developed or natural beach areas.
  - c. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
  - d. The facility shall be located so as to minimize adverse effects on fisheries.
  - e. 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 six feet for non-commercial uses.
  - f. No dock, pier, bridge and/or float can extend beyond the six foot mean low water line as defined by the current Harbor Mooring Plan, as amended, without an opinion from the Harbor Committee.

- g. No new structure shall be 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 unless the structure requires direct access to the water body or wetland as an operational necessity. These permitted structures shall not exceed 20' in height above the pier, dock, wharf or other structure.  
EXCEPTION: Within the Commercial/Maritime, Maritime and Harbor Zones these structures shall not exceed Twenty five feet (25').
  - h. No existing structures built on or over 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 zone.
  - i. 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.
4. Pier, dock, etc. applications must contain the following information for submission to the Harbor Committee:
- a. An overlay on the approved Mooring Plan showing the location of the applicant's abutters and their water rights in relation to the proposal;
  - b. Moorings in the area and those needed for the proposal;
  - c. Rigging for securement purposes; and
  - d. Notation of the mean low water line.

O. TIMBER HARVESTING

- 1. Resource Protection Zone abutting a great pond: There shall be no timber harvesting except to remove safety hazards within the strip of land extending 75' inland from the normal high-water line. Beyond the 75 foot strip, timber harvesting is permitted in accordance with the sections below, except that in no case shall the average residual basal area of trees over 4 inches in diameter at 4 ½ inches above ground level be reduced to less than 30 square feet per acre.
- 2. All other shoreland zones:
  - a. Selective cutting of no more than 40% of the total volume of trees 4" or more in diameter measured at 4 1/2" above ground level on any lot in any 10 year period is permitted with the following conditions:
    - 1) Within One Hundred feet (100') of the normal high-water line of a great pond and within Seventy Five feet (75') of the normal high-water line of other water bodies, streams, or the upland edge of a wetland, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
    - 2) At distances greater than One Hundred feet (100') and Seventy Five feet (75') respectively, harvesting operations shall not create single clear-cut openings greater than 10,000 sq. ft. in the forest canopy. Where such openings exceed 5000 sq. ft. they shall be at least 100' apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.
  - b. Operations exceeding the 40% limitation 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 Ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

3. No accumulation of slash shall be left within 50' of the normal high-water line of a water body if part thereof extends more than 4' above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
4. Timber harvesting equipment shall not use stream channels as travel routes except when surface waters are frozen and the activity will not result in any ground disturbance.
5. 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.
6. 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.
7.
  - a. 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' 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 the upland edge of a wetland.
  - b. For each 10% increase in slope, the unscarified strip shall be increased by 20'. 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' from the normal high-water line of a water body or upland edge of a wetland.

**P. TRAILER, CAMPER, or OTHER RECREATINAL VEHICLE**

1. None shall be used for recreational use unless it is in a campground or private campsite which has been established in accord with the provisions of this Ordinance.
2. The CEO may issue a permit authorizing their use for residential purposes (see Campsite, Paragraph E, this Section).

**SECTION VIII: PERMIT REVIEW**

**A. APPLICABILITY**

1. The property owner must secure approval for the following activities from either the Planning Board or the Code Enforcement Officer subject to the appropriate standards of this Ordinance, unless a variance is obtained:
  - a. Any building, structure or part thereof to be erected, constructed, reconstructed, externally enlarged, converted, moved, or demolished;
  - b. Any area for a road or driveway, or area for parking or loading, to be established or expanded;
  - c. Any fill and/or excavation of over 100 cubic yards;
  - d. Any sign to be erected or enlarged;
  - e. Any new use, expansion of an existing use, or change of use; and
2. No local building permit is needed for the following activities, but they must be performed in conformance with the provisions of this Ordinance:
  - a. Repair, maintenance, and alterations to a structure which do NOT affect its footprint, location, height, or use;
  - b. A weekend use such as garage sales and yard sales provided the use occurs only once in any month;

- c. Occasional activities, such as children's roadside stands, school fund raisers;
- d. Detached structures, such as dog kennels, tool sheds, which are less than eighty (80) square feet, except in shoreland or floodplain zone; no permanent foundation allowed however must be anchored to the location
- e. Clearing for development or timber harvesting which is compliant with the Performance Standards, except in the shoreland zone; and
- f. A track", an access formed for brush clearing and such purposes with no stone or gravel material introduced and which does not give access to a separate lot.

## B. REVIEW AUTHORITY

1. The Code Enforcement Officer (CEO) will have the authority to review the following:
  - a. All single family or two family residential construction
  - b. All commercial additions of 1,000\_sq.ft. of total floor area or less subject to definitive performance standards.
  - c. Creation or expansion of driveways up to 200 ft. In length
  - d. Placement of signs
  - e. Demolition of buildings and structures
  - f. Relocation of residential buildings and structures
  - g. The moving or excavation of 100 – 500 cubic yards of inert fill, except within 75 feet, horizontal distance, of the shoreline of a stream or within the Resource Protection Zone where planning board review is required.
  - h. Piers, docks, and wharfs serving a residential use
2. The Planning Board will have the authority to review the following:
  - a. Multi-family residential construction
  - b. All commercial principal buildings and additions greater than 250 square feet
  - c. Relocation of non-residential buildings and structures
  - d. Piers, docks, wharves, etc. For non-residential uses
  - e. Institutional and governmental activities
  - f. Creation or expansion of roads, and driveways over 200 feet in length
  - g. Changes of use
  - h. The moving or excavation of more than 500 cubic yards of inert fill
  - i. Any land use or building activity not specified. (5-4-10)
3. The CEO may request the advice and concurrence of the Planning Board on any application which raises unusual questions, and shall refer any application to the Board for decision, which in the CEO's judgment requires a public hearing or otherwise requires action by the Planning Board.

## C. PERMIT APPLICATION

1. Application forms:
  - a. The form shall be as prescribed by the Town.
  - b. Review by the Code Enforcement Officer: the original application shall be retained by the Town and filed with a copy of the permit.
  - c. Review by the Planning Board:
    - 1) The original application form and eight copies shall be submitted with the plans for the project.
    - 2) The original application shall be retained by the Town and filed with a copy of the permit.

2. All applications shall be signed by an owner or individual who can show evidence or 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.
3. Applications for approval under this Ordinance must include evidence that all appropriate local, State, and Federal agencies have been requested to determine if additional permits must be sought from them. Final approval may be given conditionally upon receipt of these permits if they are required.
4. Plans:
  - a. The applicant shall submit a project key plan and a site plan. Plans for new buildings and/or structures are also required. These may be preliminary or final plans. In addition, eight (8) copies of the plan(s) reduced to a size of 8 2 by 11 inches or 11 by 17 inches shall be submitted with applications to the Planning Board.
  - b. A key map must show the entire project; its relation to surrounding properties; and names of the property owners. A copy of the assessing map showing the property is available in the Town Office.
  - c. A site plan, drawn to a scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the CEO or Planning Board, shall include the following, as applicable:
    - 1) Scale, north arrow, and names of abutting property owners
    - 2) Dimensions and area of each lot to be built upon or otherwise used
    - 3) Location of any wells on the lot or within 100' of property lines
    - 4) Name and location of any abutting water body
    - 5) Location of any streams, brooks, and wetlands
    - 6) Areas to be cleared and areas of any cut, fill, grading, or other earthmoving activity
    - 7) Size, shape and location of existing and proposed buildings and/or structures including dumpsters, piers, docks and floats, noting setbacks from lot lines, rights of ways, water bodies, etc.
    - 8) Outdoor lighting and signs: existing and proposed locations
    - 9) Sewer & water facilities & connections: existing and proposed
    - 10) Location and layout of parking areas, and all existing and proposed parking spaces (including spaces for commercial vehicles) measured to the standards in the Ordinance. Legally non-conforming spaces must be noted.
    - 11) Location of existing and proposed roads/driveways and the distance of each from nearest lot lines
    - 12) Name and location of existing or proposed rights of way and easements on the site, or abutting the property
    - 13) Existing grades and any proposed changes in grades
    - 14) A soil erosion and sedimentation control plan.
  - d. Structure plans must show access, height, and dimensions
  - e. A buffering/landscape plan, if required as described in SECTION VI. A
  - f. A map of the property showing any freshwater wetlands and hydric soils on the site (available on the Southwest Harbor GIS Maps).
  - g. Any additional information requested by the CEO or Planning Board for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this Ordinance, including but not limited to sketch plans or renderings of proposed structures.
5. The CEO and the Planning Board shall ensure that the drawings and specifications meet all applicable codes and ordinances.

6. The Planning Board may also require the following:
  - a. Bonds, letters of credit, or other securities to insure the installation of improvements.
  - b. Agreement in writing by the applicant to all conditions of approval.

D. PERMIT APPROVAL PROCEDURE

1. Upon receiving an application, the Town shall note the date of receipt on the application, issue a dated receipt to the applicant if requested, and direct the application to the appropriate review authority.
2. The CEO shall act upon applications according to the following procedure:
  - a. Within 35 days from the date of receipt of the application, the CEO shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.
  - b. When the CEO has determined that the application is complete, the date shall be so noted on the application form. A dated receipt may be issued if so requested.
  - c. Within 7 days after the application has been accepted as complete, the CEO shall direct the Town to notify the abutters of the project.
  - d. No sooner than 7 days from the date of notification (except as noted below) and within 35 days from receiving a complete application, the CEO shall approve, approve with conditions, or deny in writing on the conformity of those uses established in Section VIII.B.1. to the land use, structure, and performance standards within this Ordinance.

EXCEPTIONS:

- 1) For applications for a deck, shed, garage or similar accessory residential structures and/or the addition to or other improvement of a conforming residential structure, the total size of which is no more than 600 square feet of floor area, the CEO may act without waiting 7 days for the required notification to be effective. This exception would not apply to new dwelling units or driveways.
  - 2) For applications for the demolition of a building or structure, the CEO must wait fourteen (14) days for the required notification to be effective, unless for health and safety reasons the building or structure should be removed immediately.
3. The Planning Board shall act on applications presented to it according to the following procedure:
    - a. Upon receipt of the application, the Town will decide whether the information in the application is sufficient for review. If the application is insufficient or inadequate, the Town will notify the applicant within fifteen (15) business days, in writing, of additional information required. Once all necessary information is provided, as determined by the Town, the application will be issued a date of receipt. Within thirty-five (35) days from the date of receipt of the application, the Town shall have notified the applicant of the date, time and place of the Public Hearing on this application and cause this information to be published in a newspaper of local circulation at least seven (7) days in advance of the Hearing and similarly notify the abutters to the applicant by mail. A copy of the stamped envelopes to the abutters and the printed newspaper notification shall be maintained in the file of the applicant.
    - b. The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the application. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.



- c. At the Hearing, the Planning Board shall first determine if the application is a complete application or specify the additional material needed to make it complete. When requested additional material is delivered to the Town Office, the Hearing will be rescheduled.
  - d. After submission of a complete application, the Planning Board shall either approve, approve with conditions, or deny the application in writing within thirty-five (35) days from the Public Hearing at which the application was ruled complete, or within another time limit as may be otherwise mutually agreed to by the Board and the Applicant.
  - e. If the permit is denied, the denial shall include a written statement of Findings of Fact and of reasons in support of the decision
  - f. Completed applications shall be approved only by a decision of the majority of the full Board that the proposed use is in conformance with the land use, structure, and performance standards of this Ordinance. The approval may include a statement of Findings of Fact.
- 4. In issuing approval, the CEO/Planning Board may attach such restrictions and conditions as it deems necessary to ensure compliance with the Ordinance.
  - 5. An appeal to the Board of Appeals from an approval or denial of a permit application shall be made within 30 days of the approval or denial.

E. MODIFICATION to an APPROVED PERMIT

- 1. The permit shall have been approved within the last eighteen months.
- 2. The modification shall be minor (as determined by the CEO); if the CEO determines that the modification is not minor, the applicant shall apply to the appropriate review authority with a new application.
- 3. The CEO shall be the permitting authority for the modification. The CEO will request the advice and concurrence of the Planning Board if the modification raises unusual questions or if, in the CEO's judgment, a public hearing should occur.
- 4. The procedure for a modification shall be the same as for the original permit except that the scope of review shall be limited to those portions of the plan which are proposed to be changed.

F. RECONSIDERATION/REVOCATION

- 1. Reconsideration
  - a. This is a procedural rule to get a subject back onto the table for substantive discussion.
  - b. A motion to reconsider a previous decision shall only be made by a Board Member voting on the prevailing side of the original decision. The motion must be offered either at the Meeting at which the original decision was made or at the next regularly scheduled Board Meeting (unless the Board calls a Special Meeting for the reconsideration prior to the regularly scheduled time), but in no case more than 30 days from the date of the original decision.
  - c. The applicant and any one offering verbal or written testimony at the Board's original hearing on the original application shall be given direct notice of the proposed reconsideration.
- 2. Revocation
  - a. This is a jurisdictional rule and deals with the substance of the issues and vested rights.
  - b. Any decision to revoke approval must be made by the Board or Official who granted the approval. The decision must be preceded by written notice and opportunity for a Hearing.
  - c. The revocation process may occur upon discovery that the Board or Official granted approval without authority or that the applicant made false statements material to the decision to approve the application, provided the applicant has not acquired a vested right.

- d. To determine whether a vested right exists, the Planning Board or Official must make a positive finding on each of the following criteria:
  1. Applicant exercised due diligence to comply with the law;
  2. Applicant demonstrated good faith throughout the proceedings;
  3. Applicant expended substantial unrecoverable funds in reliance on the Board's (or Official's) approval;
  4. Appeal period has expired; and
  5. Insufficient evidence to prove that individual property rights or public health, safety or welfare would be adversely affected by the project as approved.

#### G. FEES

1. Each application for site plan review shall be accompanied by an administrative fee and a public notice fee, if applicable. These fees shall, from time to time, be set by the Southwest Harbor Board of Selectmen. No application for review shall be deemed complete until the applicant has paid all fees as required.
2. An approved application shall become subject to permit fees. These fees shall be set, from time to time, by the Southwest Harbor Board of Selectmen. A fee schedule is available in the Town Office.
3. Each After-the-Fact application submitted for review shall be accompanied by a late fee which shall, from time to time, be set by the Southwest Harbor Board of Selectmen.

#### H. ISSUANCE of the BUILDING PERMIT and the LIFE of the PERMIT

1. The CEO shall issue a Building Permit upon Site Plan approval.
2. The Permit shall be effective from the date of approval for a period of three years except in the shore land zone, where the permit shall be effective for one year.
  - a. The permit is vested upon substantial start.
  - b. If no substantial start in construction, and/or site operations are not completed within three years, the permit may be renewed at a fee as allowed in Section VIII, subsection G, provided renewal is within thirty (30) days of expiration.
  - c. Permit will be void for failure to renew as required in item (b) above.

#### I. CERTIFICATE of OCCUPANCY

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Code Enforcement Officer (CEO) has issued a certificate of occupancy. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the land use ordinances or any other codes of jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of the land use ordinance or other codes of this jurisdiction shall not be valid.

##### 1. Certificates Issued

After the code enforcement officer inspects the building or structure and finds no violation to the land use ordinance, land use ordinance permit or other applicable codes of this jurisdiction, the code enforcement officer shall issue a certificate of occupancy, which shall contain the following:

- a. The building permit number
- b. The address of the structure
- c. The name and address of the owner
- d. A description of that portion of the structure for which the certificate is issued.
- e. A statement that the described portion of the structure has been inspected for compliance with the requirements of the land use ordinance, land use ordinance permit.
- f. The name of the building official

- g. Any special stipulations and conditions of the building permit.

2. Temporary Occupancy

The Code Enforcement Officer is authorized to issue one temporary certificate of occupancy, not to exceed six (6) months, before the completion of the entire work covered by the permit, provided that such portion of portions shall be occupied safely.

## SECTION IX: APPEALS

A. Board of Appeals Ordinance

The Ordinance of the Southwest Harbor Board of Appeals establishes their regulations, requirements, and procedures. This is available in the Town Office.

B. The Board of Appeals has the following powers and duties relating to this Ordinance:

1. ADMINISTRATIVE APPEAL

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 Planning Board in the administration of this Ordinance.

2. VARIANCE APPEAL

To authorize variances upon appeal, within the following limitations:

- a. The establishment of a use or structure otherwise prohibited shall not be allowed by variance.
- b. A variance shall not be granted because of the presence of non-conformities in the zone or in an adjoining zone.
- c. Except as provided in subsections d. and e. below, variances may be granted by the Board from the limitations imposed by this Ordinance on height, lot size, lot coverage, and structure setbacks, only where strict application of this Ordinance, or a provision cause "undue hardship" to the applicant and his property. (This term is defined in the Board of Appeals Ordinance.)
- d. Disability variance: Refer to the Board of Appeals Ordinance
- e. Setback variance: To hear and authorize a variance subject to a special statute "undue hardship" definition for single family dwellings.
- f. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within 14 days of the decision.
- g. Variances granted must be recorded by certificate in the Hancock County Registry of Deeds within 30 days of final approval. (Variances not recorded within this time shall be invalid.) The certificate must be prepared in recordable form and provided to the applicant. It must indicate the name of the current property owner, identify the property by reference to the last recorded deed or deeds of ownership in its chain of title, and indicate the fact that a variance, including any conditions on the variance, has been granted and the date of the granting.

3. EXTENSIONS TO THE LIFE OF THE BUILDING PERMIT

To hear and authorize the extension of building permits for one year, but not to exceed two extensions. The applicant must show that progress has been made toward completion or that progress has been prevented by reasons beyond the control of the applicant.

C. APPEAL PROCEDURE

- 1. An administrative or variance appeal may be taken to the Board of Appeals within 30 days of the date of the decision appealed from.
- 2. The Board of Appeals meets monthly.

3. Forms for the appeal are available in the Town Office.
4. A fee for appeals may be set from time to time by the Board of Appeals.
5. Upon being notified of an appeal, the Code Enforcement Officer/Planning Board shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
6. The person filing the appeal shall have the burden of proof.

**D. APPEALS to SUPERIOR COURT**

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.

**SECTION X: ENFORCEMENT**

A. Any violation of this Ordinance shall be deemed to be a "nuisance".

**B. Code Enforcement Officer**

1. It shall be the duty of the Code Enforcement Officer (CEO) to enforce the provisions of this Ordinance. 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 Ordinance.
2. If the CEO shall find that any provision of this Ordinance is being violated, he 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 an after-the-fact application for a permit; a modification of an approved permit; discontinuance of illegal use of land, buildings, structures, and work being done; removal of illegal buildings or structures; and abatement of nuisance conditions. He shall require compliance with this written notice.
3. In cases where the alleged violator disputes the interpretation or order of the CEO, but discontinues the activity after CEO notice, the alleged violator may appeal the CEO action or decision to the Board of Appeals. No construction or other activity may be undertaken during this period other than the actions which may be necessary to protect property or the environment and as agreed to by the CEO and alleged violator (to allow erosion control measures or temporary tarp over open roof, etc.) The Board of Appeals shall consider such cases as administrative appeals and it may instruct the Code Enforcement Officer to reconsider his decision.
4. A complete record of all essential transactions, including applications submitted, permits granted or denied, revocation actions, revocation of permits, appeals, variances granted or denied, alleged violations investigated, alleged violations found, court actions, and fees collected shall be maintained in the Town Office. 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.

**C. Legal Actions**

1. When the above action does not result in the correction or abatement of the violation or nuisance 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 Ordinance in the name of the Town.
2. The Town officers, or their authorized agent, are hereby authorized to propose, negotiate, and enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering any costs, fines or penalty without Court action. Such agreements shall not allow an illegal structure or use to continue or remain unless there condition, the Town Officers or Town Manager, upon notice from the CEO, are hereby authorized and 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 Town official and there is no evidence that the owner acted in bad faith. The Town Officers may allow the illegal structure or use to remain if it is determined 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. Nothing in this Ordinance shall be construed to allow the occupation or use of an illegal structure or the operation of an illegal use.

3. A decision by the Town Officers or Town Manager to proceed in a legal action against an alleged violator for violations of this Ordinance or any permit issued pursuant to this Ordinance is not appealable to the Board of Appeals. This Ordinance shall be enforced in accordance with Title 30-A MRSA Paragraph 4452.
4. Any person, including but not limited to a landowner, a landowner's agent, the entity in possession, or a contractor, who violates any provisions or requirement of this Ordinance shall be penalized in accordance with Title 30-A MRSA Section 4452 which specifies that monetary penalties shall be assessed on a per day basis, and that each day a violation exists constitutes a separate violation. The law provides for penalties ranging from a minimum of \$100 to a maximum of \$2500 per violation. The law also allows the Court to increase the maximum penalty above \$2500 when it can be shown that the economic benefit to the landowner or costs avoided by violating a land use, structure or performance standard exceeds the applicable penalty. In the Resource Protection Zone the maximum penalty per day is increased to \$5000.
5. The following factors will be taken into consideration in determining an appropriate fine:
  - a. Any prior violations by the same party, person, or entity.
  - b. The degree of environmental damage that cannot be abated or corrected.
  - c. The extent to which the violation continued following a Town order to stop.
  - d. The extent to which the Town contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
  - e. The amount of any economic benefit gained by the landowner or entity in possession as a result of the violation.

## **SECTION XI: PROCEDURE FOR AMENDING THE ORDINANCE**

- A. This Ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting, or by local referendum ballot. Any changes including typographical, punctuation or other grammar edits must also be approved by the legislative body.
- B. Any proposed amendment(s) must be submitted to the Planning Board not later than ninety (90) days before the regular or special Town Meeting.
- C. The Planning Board shall have held a public hearing on the proposed change after a notice has been posted in the municipal office at least thirteen (13) days before the public hearing and the notice has been published at least two (2) times in a newspaper with local circulation. The date of the first publication must be at least twelve (12) days before the public hearing and the date of the second publication must be at least seven (7) days before the public hearing.
- D. If the ordinance is to be enacted by secret ballot, then the Selectmen shall hold a Public Hearing at least 10 days before the date of the referendum vote on the final draft of the ordinance changes. At this public hearing, the Planning Board shall report in writing its opinion on the desirability of the proposed change(s). Any alterations to the proposed ordinance changes would require the Selectmen to hold another public hearing.

- E. Zoning ordinance changes have further requirements as detailed in State law. Unless more stringent requirements are expressly provided for in this section, all other notice, hearing and adoption requirements set forth in the Maine Statutes shall be complied with.
- F. Copies of amendments, attested and signed by the Municipal Clerk, shall be reported to the Commissioner of the Department of Environmental Protection within forty-five (45) days and are not effective unless approved by the Commissioner. If the Commissioner does not act on this within forty-five (45) days of the receipt, the amendment is automatically approved. Any application for a permit submitted to the town within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the commissioner.
- G. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.
- H. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.
  - A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment. [1993, c. 374, §4 (NEW).]
  - B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing Shoreland Zoning contained in Title 38, chapter 3, subchapter I, article 2-B. [1999, c. 761, §9 (AMD).]

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection C.

## SECTION XII: APPENDIX:

### Definitions of Zones by Tax Map References and Street Names

Normally the boundary lines of the zones will follow property lines or center lines of roads, streams or other public rights of way; in particular areas the boundaries indicated as approximately following established lot lines shall be construed as following such lines; when a lot is transected by a boundary, the larger part by area determines the zone location but this may extend into the smaller area by not more than 50 feet in depth beyond the boundary.

(Example Map 8: Lot 7 = 8:7)

**ZONE A: (Map 3)** Beginning at the normal high water line at the easterly end of Lawler Lane; thence westward following the centerline of Lawler Lane to the centerline of Route 102; thence northerly following the centerline of Route 102 to the easterly extension of the southern boundary of 3:1; thence westerly following the southerly line of 3:1 to the easterly line of 3:4; thence northerly by the easterly line of 3:4 to the centerline of Wesley Avenue; thence westerly following the centerline of Wesley Avenue to a point marking the intersection of the centerline of Wesley Avenue and the southerly extension of the western boundary of 6:7; thence northerly to the southwest corner of 6:7; thence northerly to the southwest corner of 6:7; thence northerly by the western boundary of 6:27 and 6:28; thence westerly along the southern boundary of 6:29 and 6:15 to the western boundary of 6:15; thence northerly along the western boundaries of 6:15, 6:16, 6:47 A, 6:49, and 6:57 to the northwestern corner of 6:57; thence following the northerly and easterly boundaries of lot 6:57 to the centerline of Forest Avenue; thence easterly along the centerline of Forest Avenue to the centerline of Route 102; thence southerly on the centerline of Route 102 to the intersection of the centerline of Route 102 and the southwesterly extension of the southern boundary of 6:83; thence northeasterly to the southwestern corner of 6:83; thence northeasterly along the southern boundary of 6:83 and 6:81 to the centerline of Herrick Road; thence southerly on the centerline of Herrick Road to a point marking the intersection of the centerline of Herrick Road and the northeasterly extension of the northeastern boundary of 6:134; thence westerly to the northwestern corner of 6:134, thence southerly following the western boundary of 6:134 through 6:120 to the centerline of Clark Point Road; thence westerly following the centerline of Clark Point Road to a point marking the intersection of Clark Point Road and the northerly extension of the easterly boundary of 3:112; thence southerly following the easterly line of 3:112 to the high water line of the Harbor thence northerly and then southerly following the normal high water line to the point of beginning.

**ZONE B:** All areas not within Zone A, Maritime Activity Zone, Commercial Fishery/Maritime Activity Zone, Harbor Zone, Residential Shoreland Zone, Resource Protection Zone, and Acadia National Park (ANP).

**COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE: (Map 4)**

Southwest Harbor Area: Beginning at the normal high water line at the southwesterly corner of 4:11; thence northerly following the easterly boundary of 4:11 to the centerline of the Clark Point Road; thence south easterly following the centerline of Clark Point Road to the end of Clark Point Road; thence northeasterly following the southeasterly sideline of Town Wharf Way to the most northerly corner of 4:35-1 (US Coast Guard); thence following the northeasterly boundary of 3:35-1 to the normal high water line of the harbor; thence following the normal high water line of the harbor to the point of beginning. Little Island: Northern half of it.

## MARITIME ACTIVITY ZONE: (Map 17)

Manset Harbor Area: Beginning at the normal high water line at the northeast corner of 17:84; thence southwesterly following the easterly boundary of 17:84 a distance of 250'; thence northeasterly 250' from the normal high water line to the centerline of Ocean House Road; thence northerly following the centerline of Ocean House Road crossing Shore Road and 1:65 to the normal high water line; thence easterly following the normal high water line to the point of beginning.

Little Island: Southern half of it.

## HARBOR ZONE: (Map 4)

Southwest Harbor Area: Beginning at the normal high water line at the southeastern edge corner of 4:10; thence northerly following the easterly boundary of 4:10 to the centerline of the Clark Point Road; thence westerly following the centerline of Clark Point Road to a point marking the intersection of the centerline of Clark Point Road and the northerly extension of the east boundary of 3:112; thence southerly to the northeasterly corner of 3:112; thence southerly following the easterly boundary of 3:112 to the normal high water line; thence easterly following then following the normal high water line to point of beginning.

Manset Harbor Area: Beginning at the normal high water line at the east end of Lawler Lane; thence westerly following the centerline Lawler Lane to the centerline of Route 102; thence southerly following the centerline of Route 102 to Seawall Road; thence southerly following the center line of Seawall Road to a point marking the intersection of the centerline of Seawall Road and the southerly extension of the easterly boundary line of 2:37; thence northeasterly following the easterly boundary of 2:37 to a point 250' from the normal high water line of the harbor; thence in an easterly direction 250' from and parallel to the high water line of the harbor to the centerline of Ocean House Road thence northerly following the centerline of Ocean House Road, and crossing Shore Road to the normal high water line; thence westerly and then northerly following the normal high water line to the point of beginning.

## RESIDENTIAL SHORELAND ZONE:

All areas along the main Shore, Greening Island Shore, and Long Pond within 250' of the normal high water line which are not in Maritime Activity Zone, Commercial Fishery/Maritime Activity Zone, Harbor Zone, Zone A, Zone C, or ANP.

Manset Area: (Map 17) Beginning at the normal high water line at the northwesterly corner of 17:83; thence southwesterly following the westerly boundary of 17:83 a distance of 250 feet; thence in a southerly direction, 250 from and parallel to the high water line of maps 17, 18 and 19 to the centerline of Seawall Road; thence southerly along the centerline of Seawall Road to a point marking the intersection of the centerline of Seawall Road and the extension of the southwesterly boundary of 19:22; thence southeasterly to the southwesterly corner of 19:22; thence southeasterly following the southwest boundary of 19:22 to the high water line, thence northerly along the high waster line to the point of beginning.

Dirigo Area: (Map 4) Beginning at the normal high water line at the most southern corner of 4:36; thence southwesterly following the northwesterly boundary of 4:36, a distance of 250 feet; thence northeasterly 250 feet from and parallel to the high water line to the southeasterly corner of 4:51; thence northeasterly following the southeast boundary line of 4:51 to the high water line; thence southerly following the high water line of the shore to the point of beginning.

Fernald Point Area: (Map 4) Beginning at the normal high water line at the southeasterly corner of 4:71, thence southwesterly following the southerly boundary line 4:71 and 4:70, a distance 250 from the normal high water line; thence northerly following a line 250 feet from and parallel to the high water



line through Map 5, 7 and 9 to a point in the northeasterly line of 11:18; thence southerly along the high water line of the shore to the point of beginning. Also, beginning at the normal high water line at the southeasterly corner of 11:19, thence westerly following the southwesterly boundary line of 11:19 a distance of 250 feet, thence northerly, following a line 250 feet from and parallel to the normal high water line to the north westerly line of 11:21, thence northerly along the line 11:21 to the normal high water line, thence southerly following the normal high water line to the point of beginning.

Long Pond Area: (Map 22) That portion of 22:12, 22:13, 22:14 & 22:15 that lie within 250' of the normal high water line of Long

Also, beginning at the normal high water line at the southerly edge of 22:26, thence easterly along the property line of 22:26 a distance of 250', thence northerly 250 feet from the high water line to the town line of Mount Desert, thence northwesterly along the town line of Mount Desert to the normal high water line, thence southerly along the normal high water line to the point of beginning.

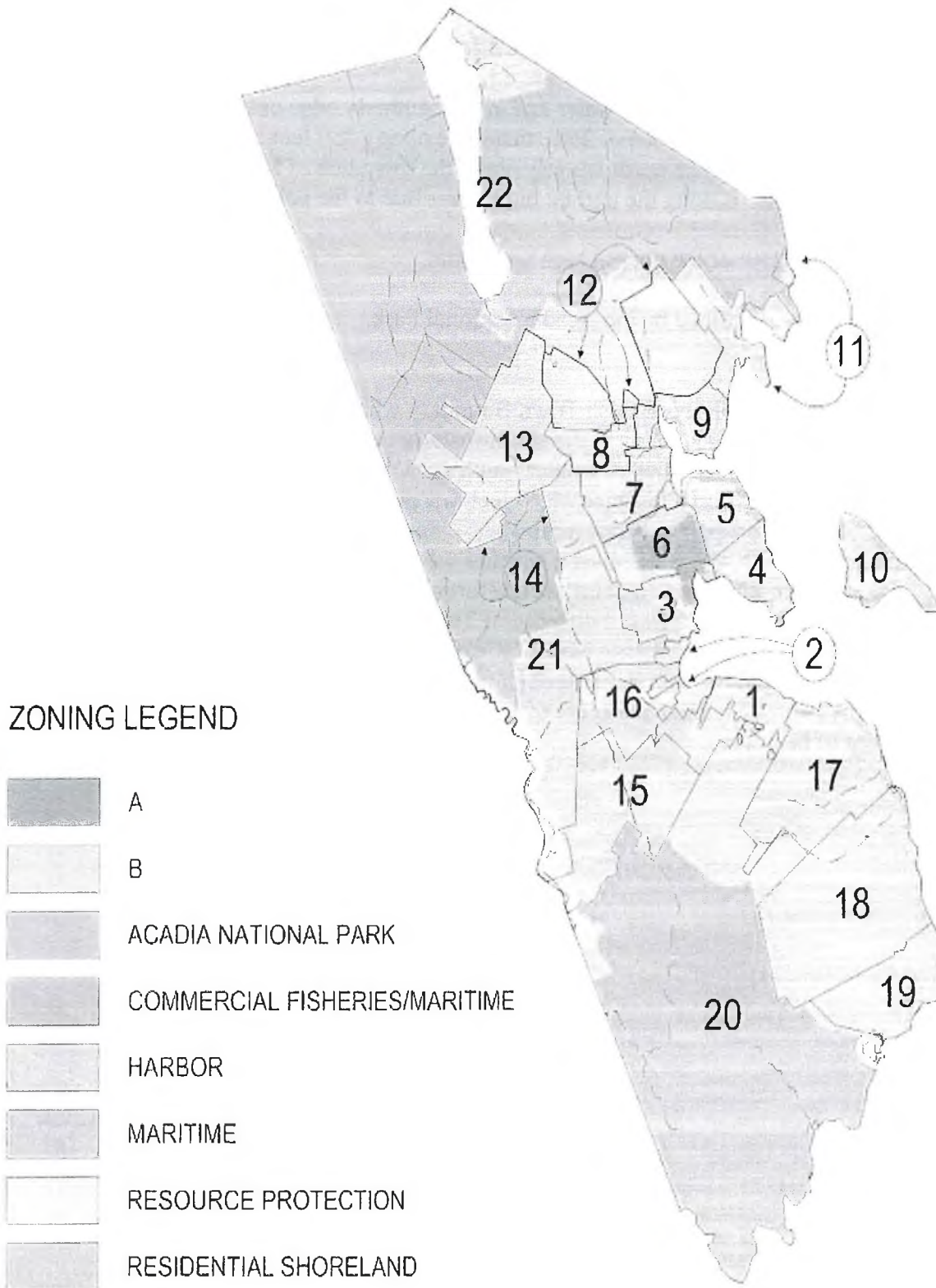
Greening Island: All areas within 250' of the normal high water line.

Acadia National Park: All areas as described by the Acadia National Park.

#### RESOURCE PROTECTION ZONE:

All areas along the Bass Harbor Marsh Town Boundary within 250' of the normal high water line which are not in the ANP. Also, beginning at the southwesterly corner of lot #5 of the Seawall Pond Subdivision approved in September, 2006 at a point South 46°6'16" West, a distance of 100.0 feet; thence turning South 61°42'16" East a distance 293.0 feet to a point; thence turning North 16°28'41" East a distance of 124.0 feet to a point; thence turning South 61°42'46" East a distance of 270 feet to a point; thence turning North 46°28'41" East a distance 44 feet to a point; thence turning South 61°42'46" East a distance of 227 feet to a point; thence turning North 46°28'41" East a distance of 112 feet to a point; thence South 61°39'3" East a distance of 218 feet to a point; thence South 46°28'47" West a distance of 122 feet to a point; thence North by West all areas located to a distance of 250 feet from the high water line around Seawall Pond through land(s) of: n/f Susan Rand; n/f Peter Benson; n/f Nathan Carroll; n/f the United States Department of Interior; n/f the State of Maine; and n/f William Milliken; to the point of beginning.

**Town of Southwest Harbor  
Existing Zoning**



## SECTION XIII: DEFINITIONS

### A. GENERAL

In reading and interpreting this ordinance the following definitional rules apply:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.
2. The words "shall" and "must" are mandatory.
3. The words "may" and "should" are permissive.
4. The word "person" or "applicant" includes individuals, firms, corporations, associations, organizations, and other similar entities.
5. The word "town" means the Town of Southwest Harbor, Maine.

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined herein shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meanings as found in the dictionary in the Planning Office.

### B. WORDS and TERMS DEFINED

**ABUTTING:** Having a common border with, or being separated from such a common border by an alley, easement, street, road, public way, or private way.

**ACCESS:** A means of approach or entry to or exit from property.

**ACCESSORY USE:** A use which is customarily both incidental and subordinate to the principal use on the same lot only. The term "incidental" in reference to the principal use shall mean both a) subordinate and minor in significance to the principal use, and b) attendant to the principal use. Such accessory uses, when aggregated by their combined square footage shall not subordinate the principal use of the 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 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 production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

**APPEAL:** A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this Ordinance as expressly authorized by the provisions of Section IX.

**ATTIC:** That part of a building which is immediately below, and wholly or partly within, the roof framing.

**AUTOMOBILE GRAVEYARD:** "Automobile graveyard" means a yard, field or outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

- AQUACULTURE:** The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.
- BASEMENT:** Any portion of a structure with a floor-to-ceiling height of 6' or more and having more than 50% of its volume below the existing ground level.
- BED & BREAKFAST:** An owner occupied, dwelling in which lodging or lodging and breakfast is offered to guests for compensation (refer to SECTION VII. C.)
- BERTH:** A space at a wharf or float for a boat to dock.
- 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:** A strip of land which may include planting, walls, fences and/or berms. It is intended to screen activities as well as buildings that could cause a nuisance, including lights, noise, movement of vehicles, glare, smells, dust, and to maintain privacy.
- BUILDING:** Any structure and its attachments such as porches and breezeways, which is built for the shelter or enclosure of persons, animals, or personal property.
- BUILDING AREA:** Total of areas taken on a horizontal plane at the main finished grade level of the building. All dimensions shall be measured between exterior faces of walls.
- BUILDING FRONT LINE:** Line parallel to the front lot line, transecting that point in the building face, which is closest, to the front lot line.
- CAMPER (TRAILER, RECREATIONAL VEHICLE, OR MOBILE HOME TEMPORAY OR OLDER TYPE:**  
A portable dwelling, such as a specially equipped trailer or automotive vehicle, for use during travel and camping, and includes any and all types of pickup camper, travel trailer, tent trailer, or motor home.
- CAMPGROUND:** A plot of ground upon which two or more campsites are located, established or maintained for occupancy by recreational vehicles or camping units of the general public as temporary living quarters for recreational, educational or vacation purposes.
- CAMPSITES:** Any plot or ground within a campground intended for the occupancy by a recreational vehicle or a camping unit.
- CAMPSITE, INDIVIDUAL PRIVATE:** An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas or tent platforms.
- CANOPY:** The more or less continuous cover formed by tree crowns in a wooded area.
- COASTAL WETLAND:** All tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide

level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service.

NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

**COMMERCIAL FISHERY:** Activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing such as the manufacture of sale of ice, bait and nets and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

**COMMERCIAL USE:** The use of lands or structures, other than a "home occupation", 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.

**CONVERSION:** Any alteration of the use of a building.

**DAMAGED OR DESTROYED:** A sudden, one-time catastrophic or accidental loss, not a gradual deterioration over time through an owner's inattention to his right to maintain a non-conforming structure.

**DEMOLITION:** The act of demolishing - to raze, to destroy

**DEVELOPMENT:** A change in land involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring. 05/09

**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 a 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 educational, vocational rehabilitation, or related services.

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

**DRIVEWAY:** A vehicular way within a lot.

**DWELLING UNIT:** A room or group of rooms designed and equipped containing cooking, sleeping and toilet facilities exclusively for use as living quarters for only 1 family. The term includes manufactured housing and mobile homes, but not recreational vehicles, motel units, cabins or cottages, except in shoreland zone, the term dwelling unit shall include rental units that contain cooking facilities regardless of time rented. Each unit of a multi-family or condominium unit shall be considered a single dwelling unit.

**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:** Gas, electrical or communication facilities; steam, fuel electric power or water transmission or distribution lines, towers and related equipment; telephone cable or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; but no buildings necessary to furnish these services.

**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 months to a use's operating season or the use of more floor area or ground area devoted to a particular use.

**FAMILY:** Any number of persons occupying a dwelling and living together as a single housekeeping unit.

**FENCE:** A structure commonly made of wooden or metal posts, boards, rails, bricks, stones, PVC, wire mesh, masonry, rocks, or similar materials, erected for the purpose of enclosing a yard or portion thereof, for screening or decoration, or for marking the general location of a lot boundary.

**FIREWALL:** A building wall which shall be constructed of noncombustible materials which have 3 hours fire resistance, such as solid concrete, block, brickwork, or metal.

**FLOOR AREA:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, as measured from the exterior faces of these walls, plus the horizontal area of any unenclosed portions of a structure such as a deck.

**FOOTPRINT:** The area within the exterior walls of a structure including the decks and excluding steps or stairways.

**FORESTED WETLANDS:** A freshwater wetland dominated by woody vegetation that is 20' tall or taller.

**FOUNDATION:** The supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts or frost walls.

**FREE-STANDING SIGN:** 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 a building.

**FRESHWATER WETLAND:** freshwater swamps, marshes, bogs and similar areas which are:

1. Of ten or more contiguous acres; or 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, but they do NOT include forested wetlands.

**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 can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters; e.g., a public shorefront park.

**GREAT POND:** Any inland body of water which in a natural state has a surface area in excess of 10 acres.

**GROUND COVER:** Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**GROSS FLOOR AREA:** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

**HEIGHT:** In the Shore land zones, it's the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the roof. In all other zones, it's the vertical distance between the highest point of finished grade as measured from foundation of the structure and the highest point of the roof.

1. This applies to all structures except steeples, silos, water towers, transmission towers, and other such structures not intended for human habitation. 05/09

**HOME OCCUPATION:** Any occupation or profession which is carried on in the principal residential dwelling unit or one structure customarily accessory to this dwelling. **EXCEPTIONS:** seasonal sale of firewood and agricultural products. (Refer to SECTION VII.H.)

**HOTEL, MOTEL:** A building or group of buildings where accommodations are provided for compensation, where a total of 16 or more bedrooms are provided at any one time. Accessory uses such as restaurants, cocktail lounges, gift shops, conference rooms, and recreational facilities such as swimming pools and game rooms may be included on the premises.

**IMPERVIOUS SURFACE:** Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, sidewalks and paved recreational facilities.

**INDUSTRIAL:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals. Examples: warehousing, transportation terminals and yards, bottling plants, food manufacturing, machine shops, boat building yards, repair garages, assembly plants, open-lot storage, heavy machine tools, chemical works, explosives manufacturing, auto wrecking, etc. (Manufacturing and heavy industry.)

**INN:** A building or group of buildings where accommodations are provided for compensation, where a total of 15 or fewer bedrooms are provided at any one time. Typical accessory uses may be included on the premises.

**INSTITUTIONAL:** Public, governmental, educational, charitable, medical or similar purpose.

**LOADING SPACE:** An off-street space or berth on the same lot with a building for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon an appropriate means of access.

**LOT:** A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is currently recognized as a separate legal entity for purposes of transfer of title.

**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 roads serving more than two lots in the Shoreland Zone.

**LOT, CORNER:** A lot with at least two contiguous sides abutting a road right-of-way. 6/92; 5/96; 5/98; 5/99

**LOT COVERAGE:** The calculation of lot coverage in the Shoreland Zones, within 250' of the normal high – water line of Zone A and within 250' of the State wetlands shall include the total footprint area of all non-vegetated surfaces. In the other zones, lot coverage includes only buildings.

**LOT OF RECORD:** Any validly recorded lot which complied with all applicable laws, ordinances, and regulations at the time of its recordation.

**LOT STANDARDS:** Any provision that controls the maximum size or location of a structure and other controls required for each dwelling unit or principle structure including: lot area; frontage; height of structures; setback of structures from shorelines, property lines, and roads; and other lot coverage.

**MANUFACTURED HOUSING:** A structural unit or units designed for occupancy, constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. This includes:

1. Units constructed after June 15, 1976, commonly called "newer mobile homes", which the manufacturer certifies are constructed in compliance with HUD standards (structures transportable in 1 or more sections which in the traveling mode are 14 body feet or more in width and 750 sq. ft. or more in area and are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities).
2. Units commonly called "modular homes" which the manufacturer certifies are constructed in compliance with the rules adopted under Title 10, Chapter 951, Subchapter III (structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities).

**MARINA:** A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat repair, indoor and outdoor storage of boats and marine equipment, bait and tackle shops, and marine fuel service facilities.



**MARITIME ACTIVITIES:** Marinas and related services; sail lofts, chandleries, boat brokerage, boat building and repair, retail boat and motor sales, boat storage, and boat refueling; sale, manufacture, and/or installation or repair of engines and other electronic devices commonly used on boats; fabrication, storage, and repair of fishing equipment; recreational fishing and boating facilities; finfish and shellfish processing and wholesaling; manufacture or sale of ice, traps and nets; boat charters and excursions; bait buying, selling and storage facilities; facilities for dredging, pier construction, marine salvage; boat and vessel fueling and bunkering; facilities for marine pollution control; warehousing and storage of goods arriving by, or awaiting shipment via water-borne cargo carriers.

**MINERAL EXPLORATION:** hand sampling, test boring, or other methods of determining the nature of 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.

**MIXED USE:** One lot under single ownership which has multiple uses on it; land use, structure and performance standards for the principal use shall apply when the building areas of the several uses are aggregated.

**MOBILE HOME PARK:** A parcel of land under unified ownership approved by the Town for the placement of 3 or more manufactured homes.

**MOBILE HOME PARK LOT:** The area of land on which an individual home is situated within the Park and which is reserved for use by the occupants of that home.

**MOBILE HOME SUBDIVISION OR DEVELOPMENT:** A parcel of land approved for the placement of manufactured houses on individually owned lots under the Subdivision Ordinance of the Town of Southwest Harbor.

**MULTI-FAMILY:** A residential containing two (2) or more dwelling units.

**NON-CONFORMING LOT:** A single lot of record which, at the effective date of adoption or amendment of Ordinance, did not meet the area, frontage, and/or width requirements of the zone in which it is located.

**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 Ordinance or subsequent amendment(s) took effect.

**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 Ordinance or subsequent amendments took effect.

**NON-CONFORMING USE:** The use of buildings, structures, premises, land or parts thereof which is not permitted allowed in the zone in which it is situated, but which is allowed to remain solely

because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**NORMAL HIGH-WATER LINE (NHL):** 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 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 great pond during the period of normal high-water are considered part of the great pond. The setback from a coastal wetland is measured from the upland edge of the wetland.

**NORMAL MAINTENANCE AND REPAIR:** Any work necessary to maintain an improvement or structure in its original or previously improved state or condition. Normal maintenance and repair shall not include reconstruction, change in design, change in structure, change in uses, change in location, or change in size or capacity.

**ONE HUNDRED YEAR FLOOD:** The highest level of flood that, on the average, is likely to occur once every 100 years; i.e., that has a 1% chance in any year.

**PERENNIAL STREAM:** The USGS (US Geological Survey) perennial stream as depicted on the GIS (Geographic Information System) base map in the Southwest Harbor Town Office.

**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 beyond 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 twelve consecutive months.

**Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve consecutive months.

**PORTABLE SIGN:** A sign not designed or intended to be permanently affixed into the ground or to a structure.

**PRINCIPAL USE:** The primary use on the lot.

**PROJECTING SIGN:** An outdoor sign, which is attached to a wall at an angle.

**PUBLIC ACCOMMODATIONS:** Place of public accommodation means any establishment which in fact caters to or offers its goods, facilities or services to, or solicits or accepts patronage from the general public.

**PUBLIC FACILITY:** Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated by a governmental body or public entity.

**RECONSTRUCT/REPLACE:** To renew without increasing the exterior dimensions

**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.

**REPLACE:** See RECONSTRUCT/REPLACE above.

**RESIDENTIAL:** One or more dwelling units.

**RESIDUAL BASAL AREA:** The average of the basal area of trees remaining on a harvested site in Shoreland Zone.

**RIPRAP:** Rocks, irregularly shaped, and at least 6" in diameter, used for erosion control and soil stabilization, typically used on ground slopes of 2:1 or less.

**ROAD (PRIVATE OR PUBLIC):** A vehicular way providing access to three or more lots.

**ROAD CAPACITY:** The maximum traffic density which will permit vehicles to travel at the assumed speed without appreciable delay. This capacity is affected by the following factors: lane width, number of lanes, traffic composition, speed, lateral clearances, intersections, and grades.

**SALT MARSH:** Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cord grass (*Spartina Alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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

**SCREEN:** Planting providing a continuous view obstruction.

**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, the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer service or upon a roadway right-of-way; and
2. In the case of telephone service, the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles.

**SETBACK:** The minimum horizontal distance from the center of the road, lot lines, and/or normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, recreational trail, parking space or other regulated object or area.

**SHORE FRONTAGE:** 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.

**SHORELAND AREA:** The land areas located within 250 horizontal feet, horizontal distance, of the normal high-water line of any great pond or river saltwater body; 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 or freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

**SHORELINE:** The normal high-water line, or upland edge of a freshwater or coastal wetland

**SLASH:** The residue, e.g., treetops and branches, left on the ground after a timber harvest.

**SIGN:** An object, device or structure, or part thereof, situated outdoors or displayed in a window, visible from a public 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, advertising flags, fixtures, colors, illuminations or projected images. Each face of a sign shall constitute a separate sign except that a sign with two sign faces shall be counted as one sign.

**SIGN AREA:** The area of the square, rectangle, triangle, circle, or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders. The structural supports of a sign are to be excluded in determining the signable area. Where a supporting structure bears more than one sign, all such signs on the structure shall be considered as one sign, and so measured. The area of one face of a two-sided sign shall be considered in determining the total area of the sign.

**SIGNS TEMPORARY:** Any sign or advertising displayed for a short period of time and not permanently mounted.

**STREAM:** Intermittent or perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland with the shore land area.

**STREET BANNER:** A temporary sign made of cloth, fabric, or flexible plastic attached on opposite sides of a street.

**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, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops. The term 'structures' in the shoreland zone includes structures temporarily or permanently located, such as decks, patios, balconies, piers, dumpsters, and satellite dishes; but excludes incidental structures for residential use, such as picnic tables, chairs, birdhouses, flagpoles".

**SUBSTANTIAL START:** Completion of thirty 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, in the shore land zone, where the referenced percent grade is substantially maintained or exceeded, through out the measured area.

**TEMPORARY STRUCTURE OR USE:** A use or placement of a structure for a period of up to 7 months in one year. The land use, structure, and performance standards must be satisfied during this period.

**TIDAL WATERS:** All waters affected by tidal action during the maximum spring 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 shore land 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 VI B, Clearing or Removal of Vegetation Standards other than timber harvesting.

**TRACK:** Access formed for brush clearing and such purposes with no stone or gravel material introduced and which does not give access to a separate lot.

**TRIBUTARY STREAM:** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydro logically 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 Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

**NOTE:** Water setback requirements apply to tributary streams within the shoreland zone.

**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 maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**USE:** The purpose or activity for which land or any building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

**VEGETATION:** All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4" in diameter, measured at 4 1/2' above ground level.

**VEHICULAR WAY:** 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.

**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 as measured from its exterior faces.

**WALL SIGN:** An outdoor sign which is attached flat to, painted on, or pinned away from a building wall or part thereof, and does not project more than 18 inches from the wall.

**WALL SIGN AREA:** The area of the facade of a building up to the roof line.

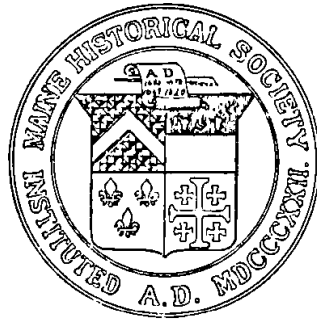
**WATER BODY:** Any great pond, river or stream, or tidal area.

**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 roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**WETLAND:** A freshwater or coastal wetland.

**WOODY VEGETATION:** Live trees or woody, non-herbaceous shrubs.

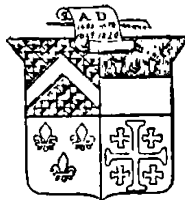
**ZONE:** A specified portion of the town, delineated on the official Zoning Map of the Town, within which certain limitations and performance standards apply under the provisions of this Ordinance.



*Maine Historical Society*  
*Newsletter*

*Vol. 11 No. 3*

*Winter, 1971*



*The Maine Historical Society  
takes pleasure in announcing  
its Third Annual Prize Essay  
Contest in Maine History:*

*PURPOSE* To encourage the study of Maine History and to promote the publication of serious research efforts in the field.

*CRITERIA* Originality, accuracy, and scholarship which shows an obvious use of source materials.

*ELIGIBILITY* Open to members or non-members of the Society. Amateurs having a strong interest in Maine history as well as professional historians and students in higher education are invited to enter. Ineligible are members of the Staff and Standing Committee of the Society.

*MANUSCRIPTS* No more than 5000 words in length, typewritten, double-spaced. Please submit manuscripts to: Director, Maine Historical Society, 485 Congress Street, Portland, Maine 04111.

*Deadline:* May 1, 1972

*AWARDS* Announcement of the awards will be made at the Annual Meeting of the Society in June, 1972. *First Prize:* \$100 and publication in the Newsletter. *Two Honorable Mention Awards* will consist of one year's complimentary membership in the Society.



MAINE HISTORICAL SOCIETY NEWSLETTER

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Volume eleven, Number three

Winter, 1972

Published quarterly at 485 Congress Street  
Portland, Maine 04111

NEWS OF THE SOCIETY

In 1962, Walter Muir Whitehill, in his *Independent Historical Societies*, wrote: "The Maine Historical Society maintains its old learned traditions within the limits of its resources. It has cultivated no arts of public address nor painted its face in an attempt to draw attention to itself."

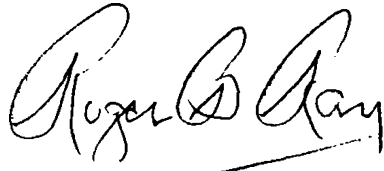
At our 150th Anniversary the temptation remains strong to become benign and quietly respectable, to stop trying so hard to preserve and make available our horde of primary documents and manuscripts and to expend less energy to maintain essential services to the people of Maine. Fortunately there appears no disposition to do this and this may be our greatest blessing.

We are accepted as a reliable research center for Maine history. We are known to have uncompromised high standards for our publications. These standards were spelled out by Judge Ashur Ware in his introduction to the very first volume of *Collections* published by this Society in 1831. Mr. Leamon's article in this issue of our *Newsletter* upholds these standards and is further a contribution to creative writing in Maine history.

If we are to fulfil the intended purposes of this Society, our Library must be kept open for all who are interested in the history of our State. For the period September through November, 630 people came here to read. 565 of these people came from 67 Maine communities. As heartening as this is we must further our efforts to reach people throughout the State, and this we attempt through our *Newsletter*, special publications, and our annual Prize Essay Contest. We are dependent also on our members to call the attention of others to the resources of this Library. But our resources would be of small use without a staff of seven remarkable people. We are thankful for them. They are our other blessing.

Our official celebration in April should be

exceptionally rewarding and fun to attend. For our members, an exhibit of our most important artifacts will be on view in the Library, and the Wadsworth-Longfellow House will be open for tea. In addition to official ceremonies at First Parish Church in April, the 150th will be observed by the publication of a fresh history of the Society. The theme of our June Annual Meeting will be: The Franco-Americans of Maine. It is becoming increasingly apparent that we shall not understand the history of our State until we know much more of the contributions made by these people and by many other cultural groups in Maine.

A handwritten signature in cursive script that reads "Roger B. Ray". The signature is written in dark ink and is positioned above the printed name.

President

*Nominations Committee:* The Committee to nominate candidates for vacancies on the Standing Committee occurring in June, 1972, has been appointed by the President. Committee members are: Arthur Monke of Brunswick, Herbert T. Silsby, II of Ellsworth, Dr. Alice R. Stewart of Orono, Roger C. Storms of Lee, and Roger C. Taylor of Rockport. The Committee will nominate seven candidates to serve on the Standing Committee for three year terms. Members of the Society are invited to communicate their suggestions for candidates to the Nominating Committee at this time. Nominations may also be achieved by a petition of twenty or more members. Petitions must be submitted to the Secretary of the Society no later than May 27, 1972.

Members now serving on the Standing Committee whose terms are due to expire in June, 1972 are: Mrs. Edwin L. Giddings of Orono, Miss Edith L. Hary of Hallowell, H. Draper Hunt, III of South Portland, William B. Jordan, Jr. of Portland, Mrs. William J. Murphy of South Portland, Miss Elizabeth Ring of Portland, and James B. Vickery, III of Brewer. All of the above names are eligible for reelection since none have served three consecutive terms, the maximum allowed under the 1969 By-laws.

## NEW MEMBERS

From MAINE Augusta: Harry E. Percival, Jr. Bangor: Constantine Albans, Donald P. Higgins Bath: Roger D. Skillings Biddeford: Albert Potvin Brooklin: James R. Wiggins Brunswick: Laurence W. Pennell Camden: Arthur E. Strout Cape Elizabeth: Mrs. John B. Barney, Mrs. John MacLeod Chebeague Island: Miss Elisabeth Weiss Cornish: Miss Constance Bell Cushing: Mrs. William Marble Denmark: Douglas Campbell East Waterboro: James E. Carll Eliot: Hawk E. Lynch Gardiner: Douglas C. Libby Kennebunk: Mrs. Merily E. DuPree Limerick: John F. Newell, Jr. Monroe: Miss Sarah Rock Naples: Mrs. Virginia Chute Oxford: George B. Robinson Peaks Island: Mrs. Ernest Town Portland: Donald E. Belgrave, Miss Nancy E. Brann, Joel W. Eastman, Donald J. King, Miss Katherine MacWilliams, Miss Mildred A. Perkins, Michael A. Preston, David Tordoff, Juris Ubans Rockland: John J. McAuliffe, II, Mrs. John J. McAuliffe, II South Portland: Christopher W. Babbidge, Marc N. Capozza, Cecil A. Dyer, Miss Donna Flynn, Richard F. Garland, Arthur R. Huff Union: A. Carman Clark Washburn: Ray H. Carter Westbrook: Miss Elizabeth W. Bicknell, Charles A. Gooding.

Other States CALIFORNIA Ojai: Mrs. Russell E. Harrison Torrance: Mrs. William R. Syfers ILLINOIS Springfield: Robert T. Carr MARYLAND Baltimore: John S. Thomsen MASSACHUSETTS Cambridge: Samuel E. Morison MISSOURI Columbia: Miss Lucia Tucci.

## LIFE MEMBERS

Miss Sheila E. Burke  
Mattawamkeag, Maine

L. Robert Porteous  
Portland, Maine

Mrs. Clinton F. Rines  
Gorham, Maine

Mr. and Mrs. J. Weston Walch  
Portland, Maine

NEWS OF OTHER SOCIETIES  
AND INSTITUTIONS

*Maine History News:* Within a fortnight, all members of the Maine Historical Society will receive a "sample" copy of *Maine History News*, official quarterly of the Maine League of Historical Societies and Museums. *Sample* copies were provided by the Maine League and are being sent at their request in order to acquaint those of you not already familiar with the publication.

The Maine League celebrated its tenth year of operation last year. Beginning with thirty member-institutions in 1961, the League now numbers some 120 local historical societies and museums. Maine Historical Society was an early sponsor and charter member.

*Maine History News* provides an informal, informative bulletin board for activities of the League and member societies. Recently, it has become the best place to keep abreast of historic preservation efforts throughout the State. Full subscription information is provided on the outside back cover.

*Maine Genealogical Inquirer:* We are frequently asked to include genealogical queries in the *Newsletter*. Much as we would like to be of help, we are unable to accept such requests for lack of space.

In the meantime, an enterprising couple from Oakland, Maine, Mr. and Mrs. Michael J. Denis have taken the situation in hand by publishing a bi-monthly periodical called *The Maine Genealogical Inquirer*. This modest, extremely useful mimeographed publication acts as a clearing house for Maine genealogical notes and queries. It also reports genealogies in preparation, accepts advertisements for genealogies in print, and does a fine job covering the field for the State of Maine. Information about subscription rates should be sent to Box 253, Oakland, Maine 04963.

*Maine State Archives:* Recent transfers to the Maine State Archives include records of the Executive Council, 1820-1959; Legislative Acts and Resolves, 1820-1967; Journals of the House and Senate, 1820-1969; Abstracts of Election Returns, 1820-1959; Census Schedules for Agriculture, Industry and Social Statistics, 1850-1880; Land Office Records consisting primarily of survey maps and field notes for Maine public lands; and Adjutant General's Department enlistment and discharge papers, bounty applications and receipts, regimental rolls (muster, descriptive, payroll, monthly returns) and correspondence, 1814-1900.

Information on public records available for research and regulations governing their use can be obtained from:  
*Reference Archivist*, Maine State Archives, State Capitol,  
Augusta, Maine 04330.

*Chancery Library. Diocese of Portland:* The Library of the Chancery, Diocese of Portland received the Father Des Jardins collection of books on French Canada. The collection contains the following genealogies not found in the Maine Historical Society Library:

- Beaumont, Charles. *Genealogie des Familles de la Cote de Beupre.* Ottawa, 1912.
- Beaumont, Charles. *Genealogy of the Families of La Beauce, P.Q. Part IX.* n.p., n.d. (From the Archives of St. Joseph de la Beauce)
- Charland, P.V. *La Famille Canac-Marquis et Familles Alliees; Dictionnaire Genealogique.* Quebec, 1918.
- Corillard Despies, Azaire. *La Premiere Famille Francaise au Canada ses Alles et ses Descendants.* Montreal, 1906.
- Dionne, N. E. *Origine des Familles Canadiennes-Francaises. Emigrees de France, d'Espagne, de Suisse, etc. pour venir se fixer au Canada depuis la Fondation de Quebec jusqu'a ces Dernier Temps et Signification de Leurs Noms.* Quebec, 1914.
- Forgues, M. Michel. *Genealogie des Familles de L'ile d'Orleans.* n.p., n.d. (From the archives of the parish of St. Laurent-Ile d'Orleans)
- Gaudet, Placide. *Genealogie des Familles Acadiennes avec Documents.* n.p., n.d.
- Godbout, P.A. *Origine des Familles Canadiennes-Francaises. Extrait de l'Etat civil Francais. Premiere Serie.* Lille, France, 1925.
- Gosselin, D. *Dictionnaire Genealogique des Familles de Charlesbourg.* Quebec, 1906.
- Lavoie, J.A. *La Famille Lavoie au Canada, de 1650 a 1921.* Quebec, 1922.
- Michaud, Adolphe. *Genealogies des Familles de la Riviere Ouelle.* Quebec, 1908.
- Tanguay, Cyprien. *Dictionnaire Genealogique de Familles Canadiennes.* Quebec, 1871-1890. 7 vols.

The Library is open to readers by appointment Mondays through Fridays and is located at 510 Ocean Avenue, Portland. The Library welcomes readers but is unable to reply to mail or phone requests for genealogical information.

James S. Leamon

*THE STAMP ACT CRISIS IN MAINE:*

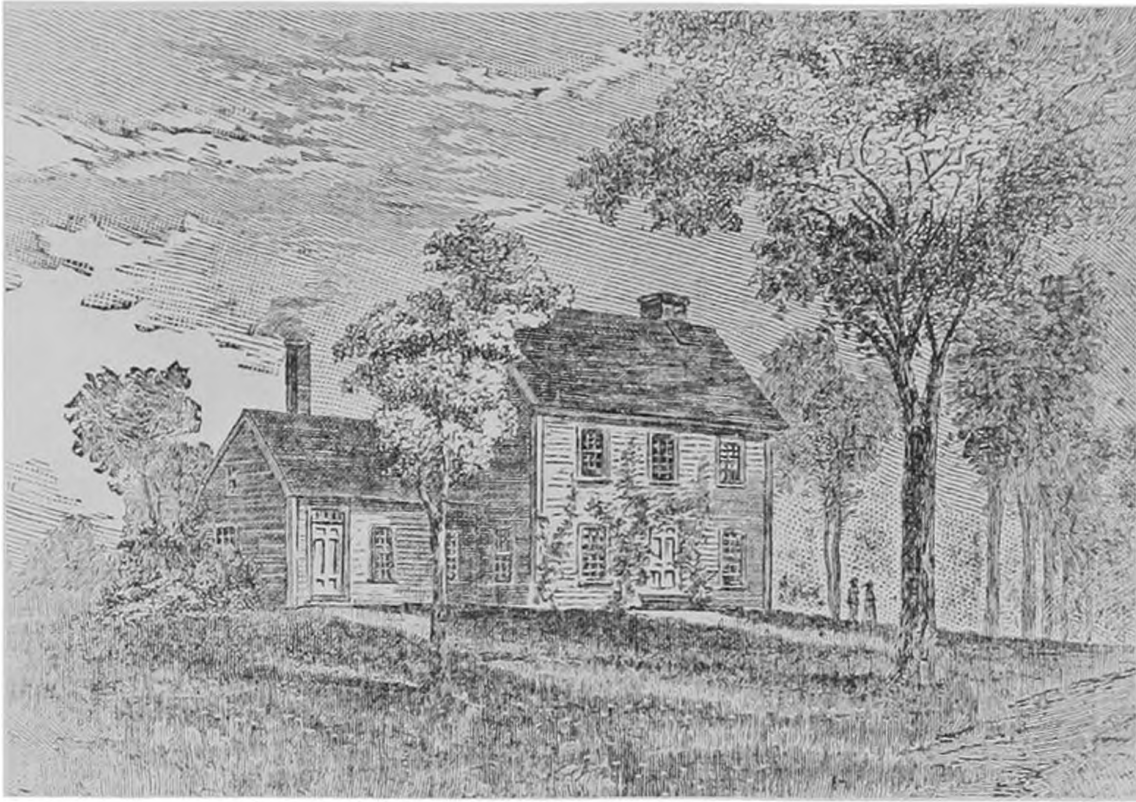
*THE CASE OF SCARBOROUGH*

Analyses of the Stamp Act do not usually include the town of Scarborough. The riotous mobs of Boston, Newport, and New York City far overshadowed what went on in this obscure Maine coastal town. But the case of Scarborough is instructive for, despite its obscurity, it offers an insight into how a small town responded to the tumultuous events of 1765-1766. More particularly, Scarborough demonstrates what the violent reaction to the Stamp Act and the act's subsequent repeal meant to the Americans themselves.

Recent studies have emphasized that eighteenth century Americans were no strangers to mob violence. [1] But the violence against the Stamp Act was unique in its scope, in its intensity, and in its apparent success. Mob violence and economic boycotts backed by the threat of violence succeeded in completely nullifying the Stamp Act during the few months it was supposedly law. Then on March 18, 1766, Parliament repealed the obnoxious measure. It was hard for Americans to avoid the conclusion that their violence had succeeded in preserving basic constitutional rights when peaceful protests and resolutions had failed. The result was to endow with widespread popular approval riotous behavior when directed toward socially desirable ends.

In Scarborough, such attitudes were explosive; for this was a town riven by deep personal hatreds of long standing. Encouraged by the quasi-legitimate disorders used to nullify the Stamp Act, one faction employed the same rhetoric and methods for purely personal ends. The object of their violence was the town's leading citizen, Richard King.

Richard King had moved to Scarborough in 1745 from Watertown in Massachusetts where he had been a timber merchant and served the colony as Captain of Commissary in the



*Richard King Mansion, Scarborough, Maine*

relief expedition to Annapolis Royal. [2] During the next twenty years, he rose from modest circumstances to become Scarborough's leading entrepreneur: a merchant, ship-builder, exporter of lumber, an owner of mills, a land speculator, and the possessor of a fine two story home, and of a warehouse. [3] On his death in 1775, King left 500 acres of land valued at £1,663, a family of Negro slaves, five yoke of oxen, about 40 head of cattle, 61 sheep, and four pigs. His library of 37 books, though modest, reflected the practical and philosophical concerns of a prosperous landed merchant. [4]

As befits one of such economic standing, King played an active role in the civic and religious life of his town. He held the usual onerous honors of assessor, surveyor of highways, and selectman. [5] In addition, King energetically sought to establish a grammar school, for lack of which the town paid repeated fines. [6] He was also an important member of the Second Parish Church at Dunston where he served as treasurer annually from 1759 to 1763. [7] But preeminence had its dangers as well as its perquisites. King eventually found himself the object of factional animosities that had as their object nothing short of his ruination or, at least, his expulsion from town.

to a large extent, King's troubles arose over his own economic power in a town beset by war, depression, drought, fire and emigration. As the town's leading merchant and land owner, King was also its chief source of credit. During normal times, he was repeatedly involved in litigation over land titles, mill rights, and payment of debts. But Scarborough's economic situation during the 1760's aggravated matters. The depression attending the conclusion of the French and Indian War was serious enough, but it coincided with a disastrous fire that swept through Scarborough in July of 1762 leaving half-a-dozen houses, several mills and barns, as well as a bridge all in ruins. [8] The fire was the terrible climax of two summers of unusual drought which drove a significant portion of the town's population eastward to found Machias between 1763 and 1765. [9] Scarborough's economic condition was precarious indeed. Its tax collectors defaulted and fled to avoid prosecution, and in 1762, the town failed to send its representative to attend the General Court. [10] However, the sympathetic legislature not only remitted the usual fine for such a lapse, but even voted £100 for the relief of those who had suffered from the fire. [11]

During these difficult times, Richard King became creditor to a large portion of Scarborough's population. Although King appears to have carried some debts from as far back as 1752, times were hard for creditors too. As a merchant retailer, King was himself in debt to Boston merchants who were retrenching, and more seriously, he had recently lost a ship at sea. [12] There is some indication that under these pressures, King may have called in some of his loans. [13] In any case, he became the personification of all the relentless economic troubles besetting the struggling community.

King also aroused opposition in his role as treasurer for the Second Parish Church. Although he had held the position for four years, in 1763 the congregation voted to reject as too high his accounts of expenses he had incurred on behalf of the parish. [14] King refused to surrender the records for an accounting, and the parish found a new treasurer in John Stuart - who was also one of King's outstanding debtors. A legal suit followed to force King to yield up his accounts, but he responded with a counter-suit of his own based on his claims against the parish. [15] King apparently won his case, and although he resumed an active role in parish affairs, the animosities persisted. [16]

On more than one occasion, the sharpening faction disturbed the community's civic affairs. In 1765, King protested his selection as constable on grounds that having held a



commission formerly, he was exempted from further such responsibilities. But John Stuart, fresh from representing Scarborough at the General Court, stoutly lied that the legislature had recently passed an act effectively removing those exemptions. [17] Over King's protests, the town meeting insisted he was legally chosen. Still, he refused either to serve or to pay the usual fine to excuse himself. The town appealed to the county justices and meantime appointed King hog reeve. [18] The justices resolved the impasse by upholding the town and fining King £5 for his refusal to fulfill his civic obligations. [19] King did not soon forget this matter.

Early the following year, John Stuart was presiding over a meeting at a local tavern to distribute the General Court's relief money to the sufferers of the recent fire. No sooner had King entered the door than Stuart publicly denounced him as one who had refused to sign the petition for help and who now should have no share in the relief. King retorted that as one of the victims of the fire, he was indeed entitled to a share, but that he rejected it voluntarily on the same grounds that had prevented his joining in the petition from the first, namely, Stuart had set himself up "of God like Impo[r]tance" to distribute what came from the government as though it were his own bounty and revelling in the worship paid to him by the recipients. [20] Warming to his task, King went on to remind his audience of the recent affair of the commission. He had done some research and discovered, as he suspected, the General Court had passed no such law as Stuart had claimed. He proceeded to lecture Stuart on "how unbecoming a lying Spirit was in a member to his Constituents, upon his return from that Hon[orable] Court." [21] Infuriated, Stuart struck back with his fist, and he branded King as one who had come to Scarborough with his pockets empty, but who had become rich by gouging the poor, but, he darkly punned, the King's reign will be but short. [22]

Among the many charges Stuart heaped on King at this tumultuous meeting was a curious one that indicates how personal was the bitterness between the two men. Stuart accused King of killing a mare that Stuart owned, but he warned, King would discover "She should be a Dear mare to him." [23] Stuart was referring to an incident early in the year when he discovered one of his horses had been shot dead. At that time, he immediately charged King who had protested his innocence. [24] Nonetheless, Stuart's mind fed on the suspicion, and he referred to the incident frequently. [25] Some time later, King discovered one of his own mares wandering loose with one ear cut off and the other badly mutilated. [26]

Aiding Stuart in his campaign of harassment was one of King's neighbors, Amos Andrews. King had good reason to believe that Andrews, who was also the parish clerk, was stealing hay from King's barn and surreptitiously grazing his livestock on King's pasture by night. By day, he delighted in impounding King's animals whenever he could, requiring King the trouble, and expense, and humiliation of paying the necessary fines. Andrews, however, was notorious for the impunity with which he and even his wife conducted "pound breaks" to rescue their animals without expense. [27] King later complained that the Andrews family had for years treated him in a manner unbecoming their Christian profession. [28]

Into this situation came the news of the Stamp Act riots in Boston, New York, and the other major cities. The Reverend Thomas Smith of Falmouth reported in his journal for August 15, "Last night there was a great mob in Boston, that destroyed the new stamp house and attacked the Secretary's." [29] One week later, he reported more news from Boston:

On Monday there was a second mob, that did violence to Capt. Halloway's and Story's houses and almost ruined the Lieut. Governor's, whose loss by it is computed at £30,000. Intoxicated by liquors, found in the cellar of Mr. Halloway, the rioters inflamed with rage, directed their course to the house of the Lieut. Gov. Hutchinson, whose family was instantly dispersed, and who after attempting in vain to save himself within doors, was also constrained to depart to save his life. By four in the morning, one of the best houses in the Province was completely in ruins, nothing remaining but the bare walls and floors. The plate, family pictures, most of the furniture, the wearing apparel, about 900 sterling in money, and the manuscript books which Mr. Hutchinson had been thirty years collecting, besides many public papers in his custody, were either carried off or destroyed. [30]

On September 12, Smith recorded, "We hear of mobs continually at Newport, Connecticut, etc. as well as in this Province. Affairs seem to be ripening to an universal mob; all relative to the Stamp officers, who are obliged to give up their commissions." [31]

By November 1, 1765, when the act was to go into effect, there existed neither stamps nor the persons to distribute them. Andrew Oliver, stamp distributor for Massachusetts, submitted his resignation August 15, the day after the mob had gutted his home. His counterpart in Newport quickly followed

suit and thereby saved his home if not those of his Tory friends. In New Hampshire and Connecticut, stamp distributors resigned not once but several times to prove their sincerity. The stamp distributor for New York quit on news of events in Boston; the New York Sons of Liberty then turned to aid the cause in Maryland. The stamp officer there had fled for safety to New York from a mob that was sacking his house. But the Yorkers took up the chase, pursued him to Long Island and forced him to resign there. The New York mob became so threatening that Governor Colden, fearing a frontal assault upon the fort, finally surrendered the stamps to prevent unnecessary bloodshed. [32] In Falmouth, Maine, the stamps met a similar fate. A brig arrived from Halifax on January 25 bringing stamped paper. The townspeople responded by seizing the offending cargo, parading through town and then burning it. [33] The same thing occurred in the town of York. [34] By December, colonial shipping had begun to move again despite the lack of stamped clearances, and by January at least some of the courts had resumed activity without the required stamped papers. [35]

This atmosphere of quasi-legitimate violence offered an admirable opportunity for those who wished to use it for their own private purposes. Such was the case in Scarborough. Very late on the night of March 19, 1766, a band of about thirty men, faces blackened, descended upon Richard King's house and store, smashed its way in and terrorized the defenseless family. Although King, his pregnant wife and five children escaped bodily harm, their personal horror may be imagined. The intruders, in a manner reminiscent of the Boston mob, methodically set to work gutting the house. They broke windows and doors, smashed the staircase and woodwork, destroyed plates, earthenware, and hangings, hacked apart the furniture - and especially concentrated upon King's desk. Here they seized his financial records: notes of indebtedness, deeds for land, and records of legal judgments worth about £1100. [36] The rioters then retired leaving a crude warning affixed to King's gatepost in which the Scarborough "Suns of liburty" having shown "a mordrit resment [*i.e.* resentment] for the repeted abus which they have reseved for many yers past" warned King or anyone else that if he took legal action against the participants, "he ma Depend onit that he not onley will have houses and barnes burnt and Consumed but him Self Cut in Peses and burnt TO ASHES... . [37]

One of King's tenants, John Fitts, received a similar sort of warning:

Fits this is to Give you notice that Wee are all ditirmand If you dont move off and Leave the Place We will Sarve You as Wd dide king Cause we are ditirmand to destroy him and all he hass. And Wee Give you 12 days to go of in and if you ant gone in that time you may Expect to be destroyed. [38]

As though to hasten his departure, his house, which King owned, was set afire and badly damaged. [39] Fitts took the hint and left the house vacant. King sought to rebuild the structure, but the mob eventually returned a year later to complete what it had begun. On the night of March 2, 1767, a band of men virtually demolished the restored house. In an almost frenzied fury, the rioters smashed in the doors, windows, and ceilings, knocked down the chimney, cut the studs and posts leaving the building a worthless pile of lumber. [40] Even livestock was not spared; King found one of his colts slaughtered and hanging from a nearby tree. [41] Ten days later, a fire totally consumed King's very large barn with its entire contents of hay and farm implements. [42]

Even this does not exhaust the list of personal outrages inflicted upon the unfortunate merchant. He was not a victim of a single spontaneous outburst, but rather of a consciously planned campaign of terror and harassment that extended over a long period of time. His windows were broken or defiled with human excrement, articles and livestock were stolen, and on one occasion, King was assaulted physically. [43] Had King cut his losses after the first violent episode, or "rested easy" as one of the rioters later put it, he might have been spared the later tribulations. However, Richard King was not to be intimidated. His response to the campaign of terror was magnificently courageous - and futile. He immediately prepared to take legal action against his assailants, petitioned the General Court for relief, and meanwhile sought a militia guard for his home and family. Unfortunately, his spirited reaction only encouraged his tormentors to be as good as their threats while proving the impossibility of obtaining redress when, as King complained, the community was unsympathetic. [44]

A militia guard for King and his family was unobtainable despite his pleas for protection. Militia commander Colonel Samuel Waldo, of Falmouth, sympathized with King's plight and did authorize Lieutenant Colonel Edward Milliken, of Scarborough, to provide the requisite guard at King's request. [45] But King, engaged in a land dispute with the Milliken family, distrusted the arrangement and preferred a guard drawn from

the neighboring communities. [46] The result was that King's home and family remained unprotected while he antagonized the rioters further by his equally futile efforts at legal redress.

It was the threat of organized violence that brought the legal machinery to a standstill. Although the justices of the peace immediately issued warrants for the arrest of some dozen suspects and a large number of witnesses, only two allowed themselves to be taken up, and they were quickly released. [48] The rest hid themselves, fled to other towns, or went about in armed groups to intimidate the law officers. One of John Stuart's sons, Timothy, escaped from the constable on the way to jail; Thomas Sanders, wanted as a witness, fled aboard ship for Machias. [49] Deputy Sheriff Samuel March reported that while he was searching for persons to serve with the king's warrants, a party of armed men was looking for him, and he confessed he feared for his life should he insist on doing his duty. [50] One of the rioters, Silas Burbank, was overheard asserting that if Richard King put any man in jail, King would very soon lose his life; the jail would be pulled down, and that man rescued. He went on to boast that the conspirators were "so bold and Resolute that they would not fear, that if his majesty Affronted them to go into his palace & take the bed from Under him or even the Crown from his head." [51]

By such means, warrants went unserved, witnesses failed to appear, and despite Richard King's trip to Boston to confer with the Attorney General, every means of redress seem frustrated. [52] Even the government itself appeared unconsciously to conspire against him. In December, 1766, the General Court passed an act providing compensation at public expense for the victims of the Stamp Act riots as well as an amnesty for the rioters. But the General Court rejected King's petition to be included in the compensation on the grounds that his sufferings were not connected with the Stamp Act. [53] Therefore, King's only recourse lay with the courts, but, as he complained, it was a discouraging prospect for,

a Privat man to bring a Great number of Persons to Justice for such Disorders as first origenated under a Notion of Publick Utility Committed in a Time of General Dissorder and Confusion while others who were alike Guilty were Exempt from Punishment by act of Government... . [54]

But finally, in 1773, King enjoyed a measure of success.

After collecting a mass of evidence and agreeing to drop the charges against several of the rioters in exchange for their testimony, he not only succeeded in bringing his case to trial before the Superior Court, but even obtained a favorable result. [55] It was only a moral victory, however, for although the jury convicted six persons, all members of the Stuart and Andrews clans, it awarded King but £200 damages - one-tenth the sum he had originally demanded. [56] In the following year, the court reconsidered the case through a writ of review. Despite the legal aid of John Adams, King obtained an award increased by only £60:10. Even this limited victory was tarnished by a reversal of judgment against Jonathan Andrews to whom the court awarded £40:10 at King's expense. [57] Thus vindicated if not recompensed, King died in March, 1775, leaving his widow and son to try to collect the court's award.

The Massachusetts government had been correct in a technical sense when it claimed that King's losses were not directly related to the Stamp Act riots. John Adams, King's legal counsel, also saw the entire affair as nothing more than a detestable instance of "insolent Rabbles" seeking to satisfy "private Prejudice and Passions." [58] King himself acknowledged this by his petitions to the General Court which clearly indicated that the rioters were seeking "the Discharge of their debts, by the Distruction of my papers." [59] Moreover, the testimony he collected for his legal actions emphasized repeatedly the primacy of local concerns quite independent of Stamp Act issues.

The Stuart family, John and his sons, John, Jr., and Timothy, were among the outstanding debtors and leaders of the anti-King movement. Their debt of £66 was a considerable one which in modern currency must have been about \$2500. [60] But the economic relationship only seemed to embitter a deep personal rivalry in which John Stuart appeared to be competing with King for leadership in town affairs, whether in the parish treasury or as representative to the General Court. King alluded to this when he denounced Stuart as raising himself to a "God like Impo[r]tance" and delighting in the public following.

The Andrews family were not major debtors to King, but shared the Stuart's antipathy to him. Amos had complained that King was a very troublesome neighbor. Undoubtedly as parish clerk and later as deacon, Amos found his neighbor equally troublesome as a churchmember. Amos' son and grandson, Jonathan and Jonathan, Jr., were blacksmiths who seem to have inherited and carried on their family's hostility

without the need of much economic stimulus.

Silas Burbank, another of the rioters, had a different sort of grudge. He was a "joyner," or cabinet maker, who at the time of the riot was engaged in litigation with King over "Cabinet wair" shipped aboard one of King's vessels that had been lost at sea. [61] In recruiting Burbank for the riot, Amos Andrews deliberately played upon the issue and urged Burbank to show some resentment. [62] In similar fashion, the Andrews clan harangued one Thomas Knight with the suspicion that King had wrongfully possessed his parents' property since the deed had been destroyed. [63]

King's legal actions against unpaid debts, disputed land titles, mill rights, and cases of trespass fill his business records and those of the courts. John Stuart's rhetoric must have stirred a responsive chord in many hearts when he asked, "has not the Potter Power over the Clay. We built him up and why Shant we pull him down[?]" [64] Yet it would be a mistake to view this episode as simply the exploited poor against the grasping rich. King's accumulated evidence reveals a mob composed of property owners and skilled craftsmen such as carpenters and blacksmiths. They were led by men of estate and reputation: the parish clerk and the parish treasurer who had also been the town's representative to the General Court. The members of the mob were also busily engaged in legal suits of their own regarding disputed boundaries, land titles, and unpaid debts. Indeed, they differ from King not so much in their activities, but rather in their scope. Scarborough's society appears to have been open and highly mobile - witness the career of Richard King himself. Yet it was all the more bitterly competitive for all that. The freedom of economic opportunity and the lack of a set hierarchical order made for a massive free-for-all in which those clambering upwards, such as the Stuarts or the Andrews, flailed away at those, such as Richard King, who had "arrived."

It is exceedingly doubtful if King's enemies would have dared to express their personal and economic grievances against him so violently had the Stamp Act riots not occurred. The disorders in Boston, Newport, New York, and even Falmouth enabled the Scarborough faction to use the gloss of patriotic violence to mask their real motives of personal advantage and private revenge. In this context, some of the arguments and logic the ringleaders used to instigate and to justify the riots are especially revealing. For example, the use of the term "Suns of liburty" in the note of warning after the first riot was an obvious effort by the mob to secure patriotic

merit for their actions. Silas Burbank later testified that John Stuart and Amos Andrews were at pains to blacken King as a supporter of the Stamp Act. [65] Andrews embellished the rumor with the warning that King even possessed the stamped paper in his own house, and that if the act were enforced, King would become stamp master for Scarborough. [66] Burbank reported further that Stuart had proposed they give King a "rally" for he had "done as much hurt to the people here, as Bute had done to the people at home." [67] This reference to Bute appears to be another effort to link King with the current political injustices and the need to reform them. The Earl of Bute had been friend and advisor to George III. Politically inept and notoriously corrupt, he was deeply hated both in England and in the colonies. In America, he was correctly regarded, along with Lord Grenville, as one of the originators of the restrictive colonial policy that included the Stamp Act. In Boston and elsewhere effigies of Grenville and Bute were hanged together during the Stamp Act disorders. [68]

This reference to Bute suggests yet another theme to justify the resort to violence. From rectifying political evils violently, it is but a short step to using the same methods to reform social wrongs. Amos Andrews made this very clear when he justified the riots by claiming King was an evil man who took advantage of everybody. He reminded Burbank of his dispute with King from which "you see how he trys to cheat you, and may judge by that, how he uses everybody. ...He is a bad man, and will ruin us all, if he goes on at this rate; if something or other is not done with him, if he is not humbled, it is not worth while for any of us to live here; and he is hard hearted to the widow and the orphan." [69] This same person had the reputation of denying to children their legal inheritance and of cheating the church of its income too.

To mob such a blackguard as this was not only social necessity, but a moral duty. Andrews assured Burbank it was no sin. [70] Stuart was quoted to the effect that if anyone merited heaven by works, those that mobbed King's house did. [71] He even found scriptural support for his cause. He recalled the Old Testament figure of Nehemiah who warned his leaders to cease taking interest and extorting houses, fields, and orchards from the poor. As a final admonition, Nehemiah shook out his robes saying, "So may God shake out every man from his house and from his labor who does not perform this promise." [7]] Scarborough's discontented elements could hardly miss the relevance of such a passage.

But the ultimate moral justification for giving King a



"rally" was not simply that it was the patriotic thing to do, or that it was social obligation, but that it would help make the intended victim, Richard King himself, a better person! Silas Burbank testified that John Stuart assured him the proposed riot "was a good thing, and would do King good, and make him a better man." [73] The evidence of another participant, Jonathan Wingate, is particularly valuable in demonstrating how the current disorders over the Stamp Act could stimulate riots to improve society in general and Richard King's character in particular. Wingate claimed that he first came across Amos Andrews in a local shop where Andrews,

...of his own motion began to discourse about the mobbings and riots that had lately happened in several parts of the province and then said the Mr. Richard King was reported to be a very bad man, took all advantages of people, was a near neighbour to him and he had found him very troublesome and he thought it would be a good scheme to mob him, and that it would do him good... . [74]

Several days later, Andrews renewed his proposals when he again met Wingate: "...he then said it was a very good thing to pay Mr. King a visit and to mob him; that he might be made a better man by it." [75] Apparently Wingate still had some doubts on the propriety of such methods of reformation, for Andrews sent him to talk with John Stuart. To Wingate's naive query of whether he thought it was best to do it, Stuart replied "with all earnestness yes by all means; which I think he repeated." [76] On his return home, Wingate stopped by the blacksmith shop belonging to Amos Andrews' son, Jonathan. Here the conversation was reopened and Jonathan had the opportunity to press his father's argument: "he said it would be a good thing to pay Mr. King a visit and that he might be made a better man by it." [77]

The ringleaders of the movement against King did not push their arguments so far as to claim that their intended victim would be undyingly grateful for their concern over his own moral restoration. Possibly they felt that they had secured enough moral and political merit to vindicate their planned activities without going that far. But the question persists as to whether the rioters might actually have been sincere in setting forth or in accepting such arguments. Were they combining economic, political, and moral sentiments or simply using the latter to disguise the former? Edmund S. Morgan has pointed out the formative persistence of Puritan values and thought through the Revolutionary period. One

powerful strand was a grudging tolerance of merchants who were suspect because they encouraged unnecessary consumption and failed to produce anything tangible, unlike the shoemaker or the farmer. Moreover, the merchant often practiced his calling to the detriment of society: charging exorbitant interest, speculating, and manipulating prices. The merchant's prosperity was also suspect - derived not from God's favor, but rather from other people's weaknesses and tribulations. It was a tainted wealth at best and a perpetual temptation to luxury and vice. [78]

It is entirely possible that Scarborough's rioters were acting - at least in part - from these premises. Their own economic adversity and personal jealousies enabled them all the more easily to see in Richard King and his prosperity a source of moral rejuvenation for the rioters who were doing God's work, for the community which was suffering, and for King himself who might be reminded that adversity was a means by which God recalled people to him. It is doubtful if such ideas were causative, but as Morgan points out, the colonists discussed and understood events of the time in terms derived from the Puritan ethic. "And the way men understood and defined the issues before them frequently influenced their decisions." [79] For Scarborough, then, the Stamp Act riots not only provided an example and opportunity to vent personal and economic grievances, but to combine these motives, not merely mask them, with powerful moral drives for personal and social reformation.

Richard King appears to have understood these sentiments, but not to have repented of his past. He obtained a panel of referees to evaluate his business practices and to pass on the justice of any complaints against him. But since not one appeal was forthcoming, the community must have doubted his sincerity. [80] Perhaps the persistence with which he pressed his actions against the rioters convinced them of his unregenerate condition. It certainly kept the entire affair alive so that its influence persisted to the eve of the Revolution. It even helped to shape the political attitudes over various crises leading up to that event.

So successfully had King's opponents blackened his reputation that they effectively denied him any political free will. Although he continued to serve his town in several important capacities, he never really recovered from the events of 1766 and 1767. By 1774 he was widely regarded as an out-and-out Tory. In 1769, for example, King stood for election to the General Assembly against his old nemesis, John Stuart, and Edward Milliken. King's speech to the

Scarborough freeholders was a model of concern over the constitutional crisis facing the empire. He urged the voters to select:

a faithful upright man who best understands the Constitution of the Brittish Government, the Rights of the Crown, Her Charters and Compacts with her Collineys & our Natural Rights as men, a man fearing God by whome Kings Reign, that will with Equal firmness Render to the King the Rights of the King. and Nobly withstand aney Attempts Even of the King's servants however Dignified, that have a manifest tendency to enslaive the Subjects of the King [81]

Yet, King's opponents, probably Stuart, impugned his motives by spreading the rumor that his only interest in going up to Boston as representative was to secure from the legislature a special act that would make the town responsible for the losses he had suffered. The rumor gained sufficient credit that King felt obliged to go before the electorate in a futile effort to vindicate himself:

I am told there are sum who to serve their Private views, alledge, that I have Petitions & Privat affairs to Negotiate at Court which would be against the Interest of the Town and in Peticuler that I have Petitioned for an act to Oblige the Town to make good the Damages I sustained by a riot etc. I know not wheather the man that alledges such a Thing is most to be Pittyed for his Ignorance or Despised for his Imposing on the People, . . . . [82]

King went on to assure his audience that he neither would nor could obtain such an act, yet he lost his bid for election. The result must have been especially bitter to him, for the winner was John Stuart. [83]

By 1774 King no longer resisted his role as a Tory. Indeed, he had come to accept this position intellectually for he was convinced the colonies would fall to the Catholic French if they tried to separate from Britain. [84] When it was learned that one of his ships had sold a cargo of lumber to the British at Boston, the rum-flushed militia marched in from Gorham and forced the now ailing old man to mount a table and to express from there sentiments favorable to the colonial cause. [85] Shortly after this humiliation, King died. His toryism tainted his son, Rufus, and son-in-law,

Dr. Robert Southgate, whom the Committee of Safety ordered to stand for investigation. [86] King's relatives overcame the stigma, but Richard King never could. He really had no choice. They had turned him into a Tory long before he, himself, had expressed views on the constitutional issues facing the empire.

The affair of Richard King indicates that the effects of the Stamp Act riots in Boston and elsewhere were not confined to the issues and persons directly involved, but spread far and wide. Violence breeds violence. In Scarborough's divided society, news of the riots sparked similar activities but for different reasons. Although they were personal and private, they were tinged with reforming zeal and deeply influenced the political stand the participants assumed in the later Revolutionary period.

-----NOTES-----

1. Gordon Wood, "A Note on Mobs in the American Revolution," *William and Mary Quarterly*, 3rd Ser., Vol. XXIII, No. 4 (October 1966), 635-642. Jessie Lemich, "Jack Tar in the Streets: Merchant Seamen in the Politics of Revolutionary America," *William and Mary Quarterly*, 3rd Ser., Vol. XXV, No. 3 (July 1968), 371-407. Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," 3rd Ser., Vol. XXVII, No. 1 (January 1970), 3-35.
2. Augustus F. Moulton, *Grandfather Tales of Scarborough* (Augusta, Maine, 1925), pp. 65-68. William S. Southgate, *The History of Scarborough from 1633-1783*, n.p., n.d., pp. 213-214. Robert Ernst, *Rufus King: American Federalist* (Chapel Hill, 1968), contains the most recent and fullest study of Richard King.
3. Southgate, *History of Scarborough*, p. 214. Richard King's Day Books for 1758-1759, 1766-1768 are in the Massachusetts Historical Society, Boston; for 1772-1774 in the Maine Historical Society, Portland. They indicate the scope and complexity of his economic activity: he built several vessels, exported boards, shingles, and clapboards, as well as some livestock to Halifax, Bermuda, Nantucket, and especially to Boston. He retailed almost every conceivable article including hay, and rented out pasture land and horses.
4. Partial inventory of Richard King's estate in the Richard King papers (microfilm) in the Rufus King manuscripts, The New York Historical Society, New York City. Ernst, *Rufus King*, pp. 7-8.

5. Scarboro Records, 1681-1781, copied by Samuel D. Rumery, Maine Historical Society, Portland, I, 180, 181, 186; II, 197-198, 200, 205, 215, 216, 225, 227, 235. Dorothy S. Libbey, *Scarborough Becomes a Town* (Freeport, Maine, 1955), p. 269.
6. Scarboro Records, I, 190-191; II, 195, 197-199. Records of the Court of General Sessions of the Peace for the County of Cumberland, Cumberland County Engineer's Office, Cumberland County Court House, Portland, I, 44-45, 59.
7. Records, Second Parish, Scarborough, 1759-1865, copied by Samuel D. Rumery, Maine Historical Society, p. 5 *et passim*.
8. Edmund S. and Helen M. Morgan, *The Stamp Act Crisis* (New York, 1963, rev. ed.), pp. 48-49. William Willis (ed.) *Journals of the Rev. Thomas Smith and the Rev. Samuel Deane* (Portland, 1849), p. 192. Memorial of John Stuart of Scarborough pleading for relief, *Acts and Resolves, Public and Private, of the Province of Massachusetts Bay* (Boston, 1912), XVIII, 102.
9. Southgate, *Scarborough*, pp. 177-181.
10. Scarboro Records, II, 207-210; *Acts and Resolves*, IV, 632, 633; V, 218.
11. *Acts and Resolves*, IV, 632; XVIII, 102.
12. Petition of Richard King to the General Court, May 30, 1767, Richard King papers (microfilm); Richard King to Silas Burbank, May 31, 1773, *Legal Papers of John Adams*, eds., L. Kinvin Wroth and Hiller B. Zobel (Cambridge, Mass., 1965), I, 118.
13. Solomon Lombard to Richard King, March 23, 1772, Robert Southgate papers relating to Scarborough, Maine Historical Society.
14. Records, Second Parish, Scarborough, p. 17.
15. *Ibid.*, pp. 18, 21, 24, 26; King's Day Book, 1766-1768, Massachusetts Historical Society, contains the costs of his suit, witnesses called, etc.
16. Records, Second Parish, Scarborough, pp. 27, 30-32; *Adams Legal Papers*, I, 106 n.
17. Draft letter of Richard King to Attorney General, n.d.; "Evidence of Sundry Persons about the mob," both in Richard King papers (microfilm).
18. Scarboro Records, II, 200, 205.
19. Records of the Cumberland County Court of General Sessions, I, 89-90.
20. "Evidence of Sundry Persons about the mob," Richard King papers (microfilm). The General Court had actually nominated three others to distribute the relief funds, but Stuart maintained his control in the matter. See *Acts and Resolves*, XVIII, 102.

21. "Evidence of Sundry Persons about the mob," Richard King papers (microfilm).
22. Evidence of Benjamin Carter and Daniel Merrill, *Ibid.*
23. Evidence of Jonathan A. Milliken, *Ibid.*
24. "Evidence of Sundry Persons about the mob," draft letter of Richard King to Attorney General, n.d., both in *Ibid.*
25. "Evidence of Sundry Persons about the mob," evidence of John Holmes, Sarah Milliken, and Martha Milliken, all in *Ibid.* Deposition of Silas Burbank, June 28, 1773, *Adams Legal Papers*, I, 121.
26. Undated note in Richard King papers (microfilm).
27. Note dated May 1, 1766, *Ibid.*
28. Incomplete draft of letter, King to Parson [Elvins?] & Church, n.d., *Ibid.*
29. *Journal of the Rev. Thomas Smith*, p. 206.
30. *Ibid.*
31. *Ibid.*
32. See Morgan, *The Stamp Act Crisis*, for the most readable and exhaustive study of these episodes.
33. *Journal of the Rev. Samuel Deane*, p. 317; William Willis, *The History of Portland* (Portland, 1833), II, 126.
34. Charles E. Banks, *History of York, Maine* (Boston, 1931), I, 379.
35. *Journal of the Rev. Samuel Deane*, p. 316; Willis, *History of Portland*, II, 126; Morgan, *Stamp Act Crisis*, Chap. X.
36. Southgate, *Scarborough*, pp. 183-184; Richard King's petition to the General Court, January 4, 1768, and Richard King to Silas Burbank, May 31, 1773, both in *Adams Legal Papers*, I, 108, 118-119.
37. *Adams Legal Papers*, I, 126.
38. *Ibid.*, p. 108 n.
39. Richard King's petition to the General Court, January 4, 1768, *Ibid.*, p. 108.
40. *Ibid.*, p. 110.
41. Deposition of Silas Burbank, June 28, 1773, *Ibid.*, p. 122.
42. Richard King's petition to the General Court, January 4, 1768, *Ibid.*, p. 110. King rebuilt the barn, October and November, 1767 at the cost of £42. Eighty men assisted at the raising exclusive of those who "partook" of the entertainment, Richard King's Day Book, 1766-1768, Massachusetts Historical Society.
43. Richard King's petition to the General Court, January 4, 1768, *Ibid.*, p. 110; notes of August 18, 1766, September 20, 1766, Richard King papers (microfilm); Richard King v. Jonathan Andrews, Jr., Records of the Cumberland

- County Inferior Court of Common Pleas, Cumberland County Court House, Portland, III, 43-44.
44. Richard King's petition to the General Court, January 4, 1768, *Adams Legal Papers*, I, 110-111; Richard King's draft petition to the General Court, May 30, 1767, Richard King papers (microfilm).
  45. Samuel Waldo to Richard King, April 4, 1766, Robert Southgate papers relating to Scarborough, Maine Historical Society; Richard King's draft petition to the General Court, May 30, 1767, Richard King papers (microfilm).
  46. Samuel Waldo to Richard King, May 18, 1767, Richard King papers (microfilm). For legal action between King and the Milliken family see Records of the Cumberland County Inferior Court of Common pleas, III, 81, 317-318, 396-398.
  47. Richard King's draft petition to the General Court, May 30, 1767, Richard King papers (microfilm).
  48. Richard King's Remonstrance to the Superior Court, July 1771, *Adams Legal Papers*, I, 112-113; Richard King's draft petition to the General Court, n.d.; warrants for alleged rioters, March 28, 1766, and release of John Stuart and Abraham Tyler, all in Richard King papers (microfilm).
  49. Richard King's Remonstrance to the Superior Court, July 1771, *Adams Legal Papers*, I, 112-113; Depositions of William Chamberlain, Jr., September 20, 1773, and Samuel March, Deputy Sheriff for Cumberland County, n.d., both in Richard King papers (microfilm).
  50. Deposition of Samuel March, Deputy Sheriff for Cumberland County, n.d., Richard King papers (microfilm).
  51. Depositions of Simon Brown, n.d., and Moses Banks, n.d., *Ibid.*
  52. Richard King's draft petition to the General Court, n.d., *Ibid.*
  53. *Adams Legal Papers*, I, 111 n. Merrill Jensen, *The Founding of a Nation* (New York, 1968), pp. 196, 198, 209-211.
  54. Richard King's petition to the General Court, January 4, 1768, *Adams Legal Papers*, I, 110-111.
  55. Documents relative to Burbank's release, *Ibid.*, 120-123.
  56. *Ibid.*, p. 106.
  57. *Ibid.*, p. 107.
  58. John Adams to Abigail Adams, July 7, 1774, *Ibid.*, p. 140.
  59. Richard King's draft petition to the General Court, May 30, 1767, Richard King papers (microfilm).
  60. "Notes of hand Destroyed or carried off by the Riot," *Ibid.* The value of colonial money varied considerably,

- but Jackson T. Main in *The Social Structure of Revolutionary America* (Princeton, 1965), pp. 9 n., 89-90, suggests that a pound sterling averaged about fifty 1965 dollars. To convert Massachusetts currency to sterling, one should subtract one-quarter.
61. Richard King to Silas Burbank, May 31, 1773, *Adams Legal Papers*, I, 118; Records of the Cumberland County Inferior Court of Common Pleas, III, 27-29.
  62. Deposition of Silas Burbank, June 28, 1773, *Adams Legal Papers*, I, 122.
  63. Deposition of Thomas Knight, n.d., Richard King papers (microfilm).
  64. Evidence of John Rice *et al.*, "Evidence of Sundry Persons about the Mob," *Ibid.*
  65. Deposition of Silas Burbank, June 28, 1773, *Adams Legal Papers*, I, 121.
  66. *Ibid.*, pp.121-122.
  67. *Ibid.*, p. 121.
  68. Sidney Lee, ed., *Dictionary of National Biography* (London, 1909), XIX, 92-98. Bute was so unpopular he could not appear on the street without considerable personal risk. His house was always the object of attack during a riot.
  69. Deposition of Silas Burbank, June 28, 1773, *Adams Legal Papers*, I, 122.
  70. *Ibid.*
  71. Evidence of Isaac Deering, "Evidence of Sundry Persons about the Mob," Richard King papers (microfilm).
  72. Evidence of Abraham Leavitt, *Ibid.*; Nehemiah V:13, Revised Standard Version.
  73. Deposition of Silas Burbank, June 28, 1773, *Adams Legal Papers*, I, 121.
  74. Deposition of Jonathan Wingate, June 16, 1773, *Ibid.*, p. 125.
  75. *Ibid.*
  76. *Ibid.*, p.126
  77. *Ibid.*
  78. Edmund S. Morgan, "The Puritan Ethic and the American Revolution," *William and Mary Quarterly*, 3rd Ser., Vol. XXIV, No. 1 (January 1967), 5-6.
  79. *Ibid.*, p. 8.
  80. Richard King's draft proposal, June 18, 1766, Richard King papers (microfilm); Richard King's petition to the General Court, 4 January, 1768, *Adams Legal Papers*, I, 109-110.
  81. Richard King's address "To the Freeholders and Others of the Town of Scarborough...", May 13, 1769, Richard King



- papers (microfilm). For a somewhat modernized version see Southgate, *Scarborough*, p. 237.
82. Richard King papers (microfilm).
  83. *Acts and Resolves*, XVIII, 374.
  84. Richard King papers (microfilm). For a modernized version see Southgate, *Scarborough*, pp. 191-192 n.
  85. Southgate, *Scarborough*, pp. 190-193; Libbey, *Scarborough*, pp. 113-114.
  86. Scarboro Records, II, 258; Rufus King to Dr. Robert Southgate, August 21, 1777, August 24, 1777, *Life and Correspondence of Rufus King...*, ed., Charles R. King (New York, 1894), I, 26-28.

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Merk, Frederick with the collaboration of Lois Bannister Merk.  
*Fruits of Propaganda in the Tyler Administration.* Cambridge,  
Harvard University Press, 1971.

This brief monograph represents a useful addition to the limited number of professional, scholarly studies now available to serious students of Maine history. In format the book is divided into two major essays, "Propaganda for Stabilizing the Northern Boundary" and "Daniel Webster and the Search for Peace, 1841-1842," each accompanied by relevant documentation. The study is designed to illustrate the employment of domestic propaganda by the administration of John Tyler for the furtherance of foreign policy objectives. The format of the study is disappointing in that the author is forced to rely upon the use of a thirty-three page introduction in a rather unsuccessful attempt to give the study a semblance of unity. As only the first essay intimately touches upon Maine history, we shall confine the comments of this review to that topic.

"Propaganda for Stabilizing the Northern Boundary" (pp. 39-92) presents as clear and succinct a synopsis of the boundary controversy as is now available. The Northeast Boundary was a troublesome legacy inherited from the Treaty of Paris of 1783 which provided for the independence of the United States. Unfortunately the delineation of the boundary between the Maine frontier and the Province of New Brunswick was defined in an ambiguous manner necessitating repeated, unsuccessful negotiations with Great Britain. With the re-development of strong party feelings in Maine during the Jacksonian period, the boundary became inextricably involved in local politics making any settlement providing Maine with less than full control over the disputed territory a severe liability for the party concurring in such an agreement.

The essential first task before any settlement could be fixed upon was to remove the issue from partisan politics. The key was first seen by Francis Ormond Jonathan Smith (1806-1876), a former Maine Congressman, banking and timber speculator, newspaper editor, and associate of Samuel F.B. Morse in the commercial organization of the telegraph. Smith was fully aware of the political delicacy of the matter, having been an early advocate of a compromise solution. As early as 1832 he had pseudonymously written a series of articles appearing in his paper, *The [Augusta] Age*, urging such a course.

Smith convinced Webster that a solution to the boundary question could be achieved if the suggestion for compromise appeared to issue from politically non-partisan sources and was based upon broad popular support throughout the state. To that end he enlisted the aid of Dr. Asa Cummings (1791-1856), editor of the prestigious and widely circulated religious journal, the [Portland] *Christian Mirror*, who was to publish pseudonymous articles by Smith urging compromise. By prior arrangement these were reprinted in other newspapers of both political persuasions to achieve the non-partisan appearance desired.

Merk is in error on a minor point when he states (p. 60) that this scheme was expedited by Smith's part ownership of the politically influential [Portland] *Eastern Argus*. In fact, sources in the Smith papers strongly indicate that he had sold all his interests in that paper to Henry W. Greene prior to the Congressional canvass of 1836 in which he was a candidate for reelection from the Cumberland District. Smith's influence over the *Argus* was achieved through his brother-in-law, the Reverend Eliphalet Case, who had purchased the *Argus* subsequent to Greene's removal from Portland.

Smith acted as Webster's agent in Maine laying the essential groundwork necessary to adjust the political temper of Maine for acceptance of the compromise solution which was ultimately embodied in the Webster-Asburton Treaty. In later years Smith considered his propagandizing role in this affair as his greatest contribution to state and nation. It is that role which Dr. Merk must be credited with having fully documented and brought to light through very extensive use of the papers of F.O.J. Smith and Governor John Fairfield which are among the many valuable collections housed at Maine Historical Society.

Thomas L. Gaffney  
*Maine Historical Society*

Chase, Virginia. *One Crow, Two Crow*. New York, The Vanguard Press, 1972.

*One Crow, Two Crow*, a Maine novel which takes place in the blueberry fields somewhere in the environs of down-east Steuben, is written by a member of our society and worthy of a brief note for those who turn to Maine novels for relaxation. Recommended "unabashedly" in an excellent review in *Down East* (October 1971), we couldn't agree more. A tragedy interspersed with more than occasional wit, the author has given us closely drawn Maine characters, taunt, ingrown,

spare in their speech, and as lacking in cultural opportunities as they were in the material blessings of the burned over blueberry barrens which was their locale. It is the story of a marriage contrived by a young woman who was herself thwarted by her inability to go to college, to the most sensitive and laconic of the town boys who, until the last chapter, remains an enigma. The development of these two characters with their dissimilar ambitions, and a handful of in-laws over a twenty year period which includes the Great Depression, provides the fascination which makes it impossible to put the book down before it is finished.

Spare in its wording and perfectly structured, in our opinion it is the best Maine novel that has appeared in recent years. In keeping with the book's tightly drawn narrative is the title taken from that prophetic Maine ditty, "One crow sorrow, Two crow joy, Three crow better, Four crow boy."

The author is an experienced writer. This is her sixth book. She is the younger sister of Edward E. Chase whose tragic death in an airplane accident many years ago deprived the Society of a promising member, and of Mary Ellen Chase. In private life she is Mrs. Wallace Perkins and lives in West Hartford, Connecticut with her husband who is a retired engineer.

Elizabeth Ring  
*Maine Historical Society*

Everson, Jennie G. *Tidewater Ice of the Kennebec River.*

[*Maine Heritage Series, Number One*] Freeport, Maine: Published for the Maine State Museum by the Bond Wheelwright Co., 1970.

Grindle, Roger L. *Quarry and Kiln: The Story of Maine's Lime Industry.* Rockland, Maine: The Courier-Gazette, Inc., 1971.

Even though both of these books will receive full reviews on these pages in future issues of the *Newsletter*, we feel compelled to point them out now because of their *exceptional* value to the history of Maine and the study of technology. Here at last are book-length presentations of two key Maine industries, rich in detail, lavish with illustrations, and what's more, published in Maine.

WRITINGS IN MAINE HISTORY  
*Periodicals and Newspapers*

ABBREVIATIONS: *CLQ* Colby Library Quarterly. *DEM* Down East Magazine. *LJM* Lewiston Journal Magazine. *MLR* Maine Law Review. *MT* Maine Times. *NF* National Fisherman. *NEQ* New England Quarterly.

- AVERILL, LAWRENCE A. Notable Wiscasset newspaper of 100 years ago [The Lilliputian]. *LJM* January 8, 1972.
- BEATTIE, ROBERT. The doomed schooner Sintram. *NF* January 1972.
- BERKELMAN, ROBERT. Saint-Gaudens is our greatest U.S. sculptor [Studio now National Historic Site in Cornish, N.H.]. *LJM* November 27, 1971.
- BOYM, NINA. The Marble Faun: Hawthorne's elegy for art. *NEQ* September 1971.
- BRODHEAD, MICHAEL J. Elliott Coues and the sparrow war. *NEQ* September 1971.
- CARY, RICHARD. The uncollected short stories of Sarah Orne Jewett. *CLQ* December 1971.
- COLBY LIBRARY QUARTERLY. Edwin Arlington Robinson: his poems, his style. *CLQ* September 1971.
- CURRIER, ISABEL. "Staunch as a stanchion" [Lewis R. French: Maine's oldest motor-driven vessel]. *DEM* January 1972.
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- DIEHL, GERTRUDE BARROWCLOUGH. The ace of hearts [Henry W. Longfellow]. *New England Galaxy*, June 1971.
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- HATCH, RICHARD W. Estuaries - rich resource or wasteland? *Maine Fish and Game*, Fall 1971.
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- Route 2 travels through scenic country [Aroostook County]. *LJM* October 30, 1971.
- Early Maine pictured in Bryent diaries [Bryen's Mills now Webster]. *LJM* November 6, 1971.
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- Architect Bulfinch left his mark on New England [Maine State Capital]. *LJM* January 22, 1972.
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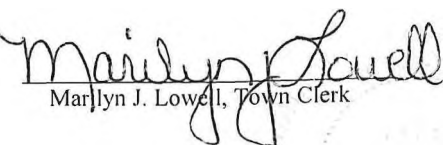
**TRAFFIC AND PARKING ORDINANCE**

**FOR THE**

**TOWN OF SOUTHWEST HARBOR**

REVISED July 17, 2018

**Attest a true copy**

  
Marilyn J. Lowell, Town Clerk

# TRAFFIC AND PARKING ORDINANCE

## For THE TOWN OF SOUTHWEST HARBOR

### ARTICLE A - AUTHORITY AND ADMINISTRATION

#### SECTION A-1 TITLE & PURPOSE

- (a) This Ordinance shall be known and may be cited as the "Traffic Ordinance of the Town of Southwest Harbor".
- (b) The purpose of this ordinance is to regulate traffic and the use of the streets, ways and roads of the Town to provide for the enforcement of traffic regulations.

#### SECTION A-2 STATE TRAFFIC LAWS ADOPTED

- (a) **Statutes Adopted.** The statutory provisions in Title 30-A, Section 3009 and Title 29A, Maine Revised Statutes (MRS), describing and defining regulations with respect to vehicles and traffic, are hereby adopted and by reference made a part of this ordinance as if fully set forth herein. Any future amendments, revisions or modifications of the statutory regulations incorporated herein are intended to be made part of this code in order to secure to the extent legally practicable uniform regulations of vehicle traffic in the Town of Southwest Harbor.
- (b) **General References.** General references in this Ordinance to Maine statutory section or chapters describing or defining procedures or authority for enactment or enforcement of local traffic regulations shall be deemed to refer to the most recent enactments of the Maine legislature describing or defining such procedures or authorities.
- (c) **Board of Selectmen.** Authorized to add or amend this ordinance as required.
- (d) **Definitions.** Terms used in this section shall have the same definition as used in State statutes previously referenced unless specified below:

Excavation - any opening in the surface of a street made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury

of damage to the public place.

Parking Enforcement Officer - A person, who may or may not be an acting certified patrol officer, to enforce the requirements and rules of the Traffic and Parking Ordinance

Person - any person who has obtained a permit required by this ordinance.

Street - any public way; includes any sidewalks located within the right-of-way of that public way.

Mobile Vendor: A mobile vehicle capable of moving or being moved from its site from which food, agriculture products and crafts are sold or offered for sale. Onsite preparation of food products for immediate consumption is not allowed.

### **SECTION A-3 OFFICIAL TRAFFIC SIGNS AND CONTROL DEVICES, PROHIBITED SIGNS, SIGNALS AND MARKERS.**

- (a) **Duty to Erect and Install Uniform Traffic Control Devices.** Whenever traffic regulations created by this Chapter, including a State traffic regulation adopted by reference in Section A-1, require the erection of traffic control devices for enforcement, the Town Manager, with the cooperation of the Police Chief, shall procure, erect and maintain uniform traffic control devices, giving notice of such traffic regulation to the users of the streets and highways on which such regulations apply.

Whenever State law grants discretion to local authorities in erecting or placement of a uniform traffic control device, devices shall be erected in such locations and in such a manner as, in the judgment of the Board of Selectmen, will carry out the purposes of this Chapter and give adequate warning to users of the streets and highways of the Town of Southwest Harbor.

- (b) **Prohibited Signs and Markers in Highways.** No person other than an officer or a parking enforcement officer authorized by this Chapter to erect and maintain official traffic control devices or his or her designee shall place within the limits of any street or highway maintained by the Town any sign, signal, marker, mark or monument unless permission is first obtained from the Police Chief, or where applicable, the Department of Transportation. The Town may remove any sign, signal, marking or other device, which is placed, maintained or displayed in violation of

this Chapter or State law.

- (c) The Select Board may authorize directional, restrictive, cautionary and other similar signs on roadsides which may be necessary to advise the public of traffic restrictions and to assist the flow of traffic.

#### **SECTION A-4 HEAVY TRAFFIC ROUTES**

(a) **Definition**

For purposes of this Section, **heavy traffic shall be defined** as:

- (1) All vehicles not operating completely on pneumatic tires; and
- (2) All vehicles or combination of vehicles, other than motor buses, designed or used for transporting property of any nature and having a registered gross weight of more than 23,000 pounds.

(b) **Posted Routes**

The Town shall at its discretion, post any Town roads or highways against heavy traffic use as defined in A-1 and A-2. This section shall not act to prohibit heavy traffic from using a street or highway for the purpose of obtaining essential supplies.

(c) **Liability**

Any operator, corporation, owner or agent whose heavy traffic vehicle damages any Town streets or highways in violating this Section shall be liable and required to pay the Town the cost of repair or replacement of the damaged street or highway.

### **ARTICLE B - CONTROLLED INTERSECTIONS; STREET TRAFFIC REGULATIONS**

#### **SECTION B-1 OPERATORS TO OBEY TRAFFIC CONTROL DEVICES**

Every operator of a vehicle approaching an intersection at which an official traffic control device is erected in accordance with this Ordinance shall obey the direction of such device as required by statutes incorporated by reference in Section A-2 of this Ordinance.

## **SECTION B-2 VEHICLE AND WEIGHT RESTRICTIONS**

No person owning or having control of any truck in excess of 23,000 lbs., trailer, truck power unit, tractor, bus, camper, or recreation vehicle shall operate the same upon any street below:

- (1) Alder Lane, West end of Shore Road
- (2) West end Shore Road / junction 102A to intersection Ocean House Road.

Town owned trucks, emergency vehicles and delivery trucks having business on the above streets are exempt for purposes of providing required services.

## **SECTION B-3 ONE WAY STREETS**

The following streets or parking lots and parts thereof are declared to be one-way streets, and no person shall operate any vehicle thereon except as indicated.

- (a) South Exit Village Green Way ("**Right Turn Only**")
- (b) Post Office Parking Lot
- (c) Pemetic School Horseshoe Parking Lot

## **ARTICLE C - SPEED LIMITS**

Speed limits shall be as posted pursuant to criteria set in state law for state roads and town ways

## **ARTICLE D - PARKING REGULATIONS**

### **SECTION D-1 RESTRICTIONS ON PARKING; POSTED LIMITATIONS**

- (a) **Twenty-four (24) Hour Limitation.** No person, firm or corporation shall park or leave standing any automobile, truck, tractor, trailer or vehicle of any description on any public street or public parking lot in the Town for a period of twenty-four (24) or more consecutive hours in the same location at any time, except that where other parking limits have been specifically established in this ordinance the other limits as established and posted shall apply. When any law enforcement officer or parking enforcement officer shall find a vehicle standing upon a public street or parking lot in violation of the provisions of this Section, he is authorized to move such a vehicle or to require the operator in charge thereof to move such vehicle to a position permitted under this Ordinance. The law enforcement officer or parking enforcement officer may cause said vehicle to be removed to an authorized

impoundment and storage area where storage space is available and in such case the owner shall pay the costs of removing said vehicle and the storage fees on said vehicle before he may recover the possession thereof.

(b) **Other Limitations**

- (1) The Board of Selectmen may designate certain streets or portions of streets as no parking or no stopping or standing zones or as zones for parking by physically handicapped persons and may limit the hours in which the restrictions apply. The Town shall mark, by appropriate signs, each zone so designated in accordance with the provisions of Maine Statutes.
- (2) Except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, or parking enforcement officer or traffic control device, no person shall stop or park a vehicle in an established no stopping or standing zone when stopping or standing is prohibited. No vehicle shall be parked in a no parking zone during hours when parking is prohibited except physicians on emergency calls or as permitted by State law or elsewhere by this Code of Ordinances.
- (3) The Chief of Police, or his designee, is hereby granted the authority within the reasonable exercise of police power to prohibit, limit the time or otherwise restrict the stopping, standing or parking of vehicles beyond the provisions of this Ordinance to respond to temporary conditions.

**SECTION D-2      PARKING RESTRICTIONS DURING TEMPORARY SNOW  
REMOVAL OR STREET MAINTENANCE**

(a) **Temporary Parking Restrictions.**

Pursuant to authority granted to municipalities, the Chief of Police of the Town is empowered to make and enforce temporary regulations relating to emergency, snow or special conditions and to prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond the prohibitions, limitations or restrictions imposed by the Statutes or by this Chapter on highways, streets or alleys, public parking lots within the Town. However, no prohibition, limitation or restriction on parking imposed under this Section is effective unless official traffic signs or markers have been placed or

erected indicating the particular prohibition, limitation or restriction or the owner of a vehicle has been notified to move the vehicle. The owners or operators of all motor vehicles parked thereon shall be subject to such regulations.

(b) **Snow Removal**

During the periods when snow has accumulated and requires removal from highways, streets, alleys, or public parking lots of the Town, parking shall be prohibited thereon in order to facilitate such snow removal. In such case, police officers shall give notice to the owner or operator of any motor vehicle so parked to remove the same as soon as it is possible to do so. If such owner or operator fails to remove such motor vehicle within 30 minutes of receiving such notice, he shall be subject to penalty as provided in Section E-1 of this Chapter.

In addition, if such owner or operator fails to remove his motor vehicle following the receipt of the notice, any police officer is authorized to remove the vehicle or cause it to be removed from the highway, street, alley or public parking lot. The owner or operator of such vehicle shall be responsible for the cost of removing the vehicle.

(c) The parking ban of all vehicles between the hours of 10 p.m. and 6 a.m. is in effect on all Town roads commencing on November 15<sup>th</sup> and terminating April 15<sup>th</sup> of each year for purpose of snow removal.

(d) All highway, streets, alley and public parking lots shall be clearly marked with the dates and times parking is prohibited.

**SECTION D-3**

**STOPPING OR PARKING PROHIBITED IN CERTAIN SPECIFIED PLACES**

(a) **Parking Prohibited at All Times.** Except temporarily for the purpose of and while actually engaged in loading or unloading or in receiving or discharging passengers or property and while the vehicle is attended by a licensed operator so that it may be moved promptly in case of emergency or to avoid obstruction of traffic, no person shall at any time park or leave standing any vehicle:

- (1) Within an intersection
- (2) On a crosswalk
- (3) On a sidewalk or terrace area, except when parking in such place is clearly indicated by official traffic



signs or markers. "Terrace or Sidewalk Area" means that area between the sidewalk and the nearest curb line running parallel or generally parallel thereto or in the absence of sidewalk four (4) feet beyond the curb line.

- (4) Alongside or opposite any highway excavation or obstruction when such stopping or standing would obstruct traffic or when pedestrian traffic would be required to travel in the roadway.
- (5) On the roadway side of any parked vehicle unless double parking is clearly indicated by official traffic signs or markers.
- (6) Within twenty (20) feet of the driveway entrance to a fire station.
- (7) Upon any portion of a highway where and at the time when stopping or standing is prohibited by official traffic signs indicating the prohibition of any stopping or standing.
- (8) In any place or manner so as to obstruct, block or impede traffic.
- (9) Upon any portion of a highway where and at the time when parking is prohibited, limited or restricted by official traffic signs.
- (10) Upon any bridge.
- (11) Upon any terrace or sidewalk in the Town at any time.
- (12) In a loading zone.
- (13) Within four (4) feet of the entrance to an alley, private road or driveway.
- (14) Parking in an area within eight (8) feet from a point on the nearest curb or roadside to a line perpendicular from the curb or roadside to a fire hydrant (Except emergency vehicles or in locations specifically designated as a parking spot)
- (15) Yellow curbs and lines indicate "no parking" zones.

**(b) Vehicles Not to Block Private Drive, Alley or Fire Lane.**

No vehicle shall, at any time, be parked so as to unreasonable restrict the normal access to any private drive, alley or fire lane. Said access shall be deemed to be unreasonably restricted if any vehicle other than owner's vehicle is parked within four (4) feet of either side of said access. Upon discovery by a police officer or upon complaint by the owner of any such blocked drive, alley or fire lane, the Chief of Police may order said vehicle towed from such position at the risk and expense of the owner of said vehicle.

**(c) Temporary Prohibited Parking.**

- (1) At any place on any of the streets and highway in the Town at which "No Parking" signs shall be posted by the Chief of Police or any police officer or parking enforcement officer of the Town. Such signs may be placed whenever the Chief of Police or any police officer on duty or parking enforcement officer deems it necessary for the safety of the traffic at any point within fifty (50) feet of any intersection of two (2) or more streets or highway within the Town or where free space is necessary for the turning of buses or other vehicles, or when the open traveled portion of the street is narrowed by excessive snow, or whenever hazardous conditions are created by construction operations, fire or other casualty, or whenever any celebration or other cause for the assembly of crowds, or orderly handling of large amounts of traffic, may require limitation upon parking within any area on the streets and highways in the Town.

**SECTION D-4 ANGLE PARKING**

- (a) Angle parking or parking diagonally is prohibited on all the streets of the Town, except where vehicle-parking markers indicate that angle parking is permissible. All vehicles shall park parallel to, and within one (1) foot of the curb except where streets and parking lots are so marked for angle parking.
- (b) **No person shall at any time angle park any vehicle:**
  - (1) In any direction other than the designated parking angle, where angle parking spaces are so designated and provided by appropriate markings.
  - (2) Backwards into angle parking spaces so designated and provided by appropriate markings.
  - (3) With a trailer attached or any vehicle longer than twenty (20) feet on any street and parking lots where angle parking is so provided and allowed.

**SECTION D-5 STORAGE PROHIBITED**

**(a) Storage Prohibited.**

No person owning or having custody of any partially dismantled, non-operable, wrecked, unregistered, junked or discarded motor vehicle shall allow such vehicle to remain on any public highway, public parking lot or public ramp

longer than twenty-four (24) hours after notification thereof by the Police Department. Any vehicle which is not removed within twenty-four (24) hours after notice is declared to be a public nuisance and may be removed as provided in Section C-8.

**SECTION D-6                    PARKING LOTS AND PARKING SPACES**

- (a) **Twenty Minutes Parking.** No person shall park or leave standing any vehicle on any portion of the following highways or parking lots or streets in the Town for a period of more than twenty minutes in the same location at any time between the hours of 6:00 a.m. and 6:00 p.m.
  - 1) East Side Post Office Parking Lot
  - 2) Loading Zone, Clark Point Road
  - 3) Village Greenway Loading Zone
  - 4) 450' north of 102/102A intersection on the east side.
  - 5) Norwood Cove turnout
  
- (b) **Two Hour Parking.** No person shall park or leave standing any vehicle on any portion of the following parking lots or streets in the Town for a period of more than two (2) consecutive hours in the same location at any time between the hours of 6:00 a.m. and 6:00 p.m.
  - 1) Main Street
  - 2) Clark Point Road, (Main Street to Maple Lane)
  - 3) Village Greenway Municipal Parking Lot
  - 4) North Side and West Side Post Office Parking Lot
  - 5) Lower Town Dock
  - 6) (6) spaces adjacent easterly to ramp at Upper Town Dock
  - 7) Pier One Inn/Hamilton Marine to Lower Town Dock
  
- (c) **Eight Hour Parking.** No person shall park or leave standing any vehicle on any portion of the following parking lots or streets in the Town for a period of more than eight (8) consecutive hours in the same location at any time between the hours of 6:00 a.m. and 6:00 p.m.
  - 1) Village Greenway Parking Lot south end.
  - 2) Manset Town Dock.
  - 3) Upper Town Dock Center Parking spaces
  - 4) Upper Town Dock, (9)spaces waterfront side parking area
  - 5) Sewer Pump Station to Hamilton Marine/Pier One
  
- (d) **Twelve Hour Parking.** No person shall park or leave standing any vehicle on any portion of the following parking lots or streets in the Town for a period of more than twelve (12)

consecutive hours in the same location at any time between the hours of 6:00 a.m. and 6:00 p.m.

- 1) Upper Level Municipal Parking Lot  
(with the exception of eight (8) permit parking spaces)
- 2) Lower Level Upper Municipal Parking Lot
- 3) Four (4) parking spaces in front of 159 Clark Point Road North side. (Sundberg's residence)
- 4) Manset Dock- Dirt Lot (Hook Property)

(e) **Seasonal Parking. (June 1 thru Sept 30)**

Notwithstanding any other provision of chapter, the town of Southwest Harbor may, upon request, issue seasonal parking permits to residents (\$250.00) and non-residents (\$500.00) for the Upper Level Municipal Parking Lot.

(g) **Parking by Permit.** Except as allowed in Section C-6, no person shall park or leave standing any vehicle on any portion of the following parking lots without the indicated permits.

- 1) Eight (8) back row spaces in Upper Level Municipal Parking Lot (\$5.00 per night)
- 2) Manset Town Dock - (Dirt Lot- Overnight by permit only)
- 3) Upper and Lower Town Docks.
- 4) 450' north of 102/102A intersection on the east side known as Manset turn out.

(e) **No Overnight Parking.** No person shall park or leave standing any vehicle on any town roads, streets or parking lots in the Town of Southwest Harbor overnight, except by permit. The Police Chief or any Police Officer may permit overnight parking on town roads and parking lots in an emergency.

(f) **Electric charge station.** *Except for vehicles requiring a charge at the two public spaces adjacent to the public bathrooms, all other vehicles will be limited to 15 minute parking.*

### **Handicapped Parking**

#### Designation Spaces

The Police Chief, with the approval of the Board of Selectmen, shall designate, or cause to be designated, public parking spaces specifically reserved for handicapped persons. Adjacent to and visible from each designated handicapped parking space shall be posted.

A sign consisting of a profile view of a wheelchair with an occupant in white in a blue background with a printed inscription. The inscription shall read: "Handicapped Parking." Or a sign consisting of a profile view of a wheelchair with an occupant in white on a blue background, which may bear an inscription. Unauthorized vehicles are subject to a fine.

Any vehicle that bears a special registration plate or placard issued under 29-A Section 521 or 523 or similar placard issued by another state may park a length of time that does not exceed twice the time limit otherwise allowed. This does not include 8, 12, or 24 hour parking areas.

### **Parking Prohibited**

No person shall park in any clearly marked parking space designated under this section as a handicapped parking space any vehicle that does not bear a special registration plate or placard issued under Title 29-A, Maine Revised Statutes, Sections 521, 523-2, 521-6, or a similar plate issued by another state, must be cited for a forfeiture of not less than \$200.00 (Title 30-A section 3009) or a violation summons and complaint may be issued pursuant to Title 29-A section 521.

### **Private Parking**

Owners of off streets parking shall arrange for private enforcement or shall enter into written agreements with the Town of Southwest Harbor to police any spaces clearly marked parking spaces dedicated for handicapped persons' vehicles. Under such agreement, Town police may exercise vested authority to ensure that parking spaces designated for the handicapped are utilized appropriately by handicapped persons, irrespective of whether the designated handicapped parking spaces are located on public or private lots open to the public and the prohibition set forth in the preceding paragraph shall apply to all parking spaces so designated.

### **Clearly Marked**

For purposes of this section clearly marked includes signs painted on pavement, vertical standing signs, or barriers, any of which are visible under existing weather conditions.

### **Parking for Commercial Fishermen/Lower Town Dock Mooring Owners.**

Notwithstanding any other provision of this chapter to the contrary, the Town of Southwest Harbor shall, upon request, on an annual basis, issue to resident full-time commercial fishermen and mooring owners permits which allow all day parking on the **Lower Town Dock and Lower Clark Point Road** subject to the

following conditions:

- a. A permit shall be valid for any of the parking spaces Located at the Lower Town Dock and Lower Clark Point Road.
- b. A permit shall serve merely to exempt the vehicle for which it was issued from the time limitations set forth in this section and shall not be construed as to Guarantee the holder thereof an available parking space in this lot.
- c. Permits shall be issued to residents first, on a first come, first served basis. Any other permits shall be issued to non-residents on a first come, first served basis, beginning January 1<sup>st</sup> of each year and shall expire on December 31<sup>st</sup> of the same year.
- d. Permits may only be requested in person.
- e. The Board of Selectmen shall, from time to time, establish the number of permits to be issued, the method of issue, and the fee to be charged therefor, if any.
- f. No permit shall be issued until the HarborMaster has been satisfied that the person requesting same is actually a commercial fisherman or mooring owner.
- g. No permit shall be issued to any person who is not current in his or her payment of mooring fees, any license or permit required to be paid to the Town by commercial fishermen, or any personal property taxes related to his or her boat or fishing equipment.
- h. No vehicle displaying a permit issued under this section maybe parked in the mentioned above lot for more than twenty-four (24) continuos hours.

#### **Upper Town Dock Parking Lot**

- 1) **Two Hour Parking.** No person shall park or leave standing any vehicle on the (6) water front spaces adjacent easterly to ramp at Upper Town Dock for a period of more than two hours in the same location at any time between the hours of 6:00 a.m. and 6:00 p.m.

**Eight Hour Parking.** No person shall park or leave standing any vehicle on the center parking spaces of the Upper Town Dock for a period of more than eight hours in the same location at any time between the

hours of 6:00 a.m. and 6:00 p.m.

**Twenty-Four Hour Parking.** No person shall park or leave standing any vehicle in the parking spaces located near Clark Point Road of the Upper Town Dock for a period more than twenty four hours in the same location at any one time.

**Greenings Island Residences.** The Town of Southwest Harbor shall provide parking spaces for the residences of Greenings Island at the Upper Town Dock lot by permit only. Parking spaces will be located in the parking area closest to the Clark Point Road clearly marked Greenings Island Residence Only. The Town of Southwest Harbor issued yearly on January 1<sup>st</sup> will provide permits.

**Recreation Vehicle Parking.** No person shall park or leave standing any RV in the designated parking space clearly marked located at the Upper Town Dock for a period more than eight hours (8) in the same location at any one time.

**Parking lot closure.** No person shall park or leave standing any vehicle at the Upper Town Dock, from dusk to dawn with the exception of those vehicles conducting legitimate business and/or those vehicles with proper permits.

#### **Manset Town Dock**

**Paved Parking Lot.** No person shall park or leave standing any vehicle in the parking spaces located in the paved portion of the Manset Town Dock for a period of more than eight hours in the same location at any one time.

**Dirt Parking Lot.** No person shall park or leave standing any vehicle in the parking lot located in the dirt portion of the Manset Town Dock for a period of more than twelve hours in the same location at any one time between 6:00 a.m. and 8:00 p.m. Overnight parking by permit only.

**Greening Island Residences.** The Town of Southwest Harbor shall provide parking spaces for the residences of Greenings Island at the Manset Town Dock Dirt Parking Lot by permit only. The Town of Southwest Harbor issued yearly on January 1<sup>st</sup> will provide permits.

**Non-Residences Permit Parking.** The Town of Southwest Harbor may provide permitted parking spaces at the Manset Town Dock Dirt Parking Lot for non-residences on a first come basis for a fee established by the Board of Selectmen.

**VENDOR PERMIT PARKING.**

Applicable within 450' north of Route 102-A on Main Street, also known as Manset turn out.

Notwithstanding any other provision of this chapter to the contrary, the Town of Southwest Harbor shall issue parking permits for the purpose of selling goods from vehicles at the Manset turn-out located north of intersection of Routes 102 & 102A, which allow limited parking subject to the following conditions:

- a. A permit shall be valid for one vehicle for a duration of nine (9) hours, from 8:00 AM to 5:00 PM. on any Monday-Wednesday-Friday or Tuesday-Thursday-Saturday. Limited one permit per vendor.
- b. Permits may only be requested in person from the Town Clerk
- c. Not more than three (3), permits to be issued for the schedule listed in section (a) which will allow vending from May 1<sup>st</sup> to October 30<sup>th</sup> of each year. Processed on a first come, first served basis.  
Applications for permits are available from March 1st for upcoming season.
- d. No permit shall allow storage of equipment or combustible products outside permitted vehicle.
- e. No more than three permitted vehicles on premises at one time.

**Parking Permit Fees**

Commercial Fisherman	Resident	\$30.00 per year
	Non-Resident	\$60.00 per year
Mooring Owner	Resident	\$30.00 per year
	Non-Resident	\$60.00 per year
Sternman Commercial Fisherman	Resident	\$30.00 per year
	Non-Resident	\$60.00 per year
Municipal Parking Lot, Upper Level		\$5.00 per day
	Seasonal Resident	\$250.00 season
	Seasonal Non-resident	\$500.00 season
Manset Town Dock (dirt lot)		\$5.00 per night
Greening Island Resident		No Charge
	(Upper Town Dock - 2 per family)	
	(Manset Town Dock - 6 permits)	
Vendor Permits, Manset Turnout		\$ 30.00 per year



## **SECTION D-7 UNLAWFUL REMOVAL OF PARKING CITATIONS**

No person other than the owner or operator thereof shall remove a Town Parking ticket from a motor vehicle.

## **SECTION D-8 REMOVAL OF ILLEGALLY PARKED VEHICLES**

- (a) **Hazard to Public Safety.** Any vehicle parked, stopped or standing upon a highway or public parking lot or ramp in violation of any of the provisions of this Chapter is declared to be a hazard to traffic and public safety.
- (b) **Removal by Operator.** Such vehicle shall be removed by the operator in charge, upon request of any police officer, or parking enforcement officer or by the police officer at the owner's expense or parking enforcement officer, to a position where parking is permitted or to a private or public parking or storage premises.
- (c) **Removal by Police Officer.** Any police officer or parking enforcement officer after issuing a citation for illegal parking, stopping or standing of an unattended vehicle in violation of this Chapter, is authorized to remove such vehicle at the owner's expense to a position where parking is permitted.

## **ARTICLE E - Miscellaneous Provisions**

### **SECTION E-1 OPERATION ON SIDEWALKS.**

There shall be no parking or operating of bicycles, skateboards motor scooters or motor vehicles on sidewalks in the Town of Southwest Harbor.

### **SECTION E-2 NOTICE**

Adequate notice is presumed after notice is sent via regular mail to the vehicle owner's address as listed in Bureau of Motor Vehicle records.

### **SECTION E-3 ENABLING PROVISION**

This ordinance is adopted to the enabling provisions of the Maine Constitution, Maine Revised Statutes, Title 30-A, Part 2, Subpart 4, Chapter 141 (30-A MRS Section 3001), and specifically pursuant to 30-A, MRS Section 3009.

**SECTION E-4 SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

**ARTICLE F - ENFORCEMENT AND PENALTIES**

**SECTION F-1 PENALTIES.**

Violations of these Ordinances will be classified as Civil violations and enforceable in accordance with MRS Title 17-A §3. Said person charged with a violation of the parking regulations contained herein may waive his/hers rights to court action by the payment to the Town of Southwest Harbor of the fees specified below within 5 days from the date of the violation.

**Parking Violation Fees:**

Overtime Parking	\$20.00	each offense
No Parking Area	\$20.00	
In Crosswalk	\$20.00	
Wrong Side of Street	\$20.00	
Interfering Snow Removal	\$20.00	
Too Near Fire Hydrant	\$25.00	each offense
Double Parking	\$25.00	each offense
Handicap Parking	\$200.00	each Offense
Other Offenses	\$20.00	

**Parking Violations**

Any vehicle ticketed three consecutive times (successive 2 hour periods) for the same violation may be towed after 24 hours of the first violation and towing and storage bill will be paid by the operator or owner of the vehicle after tickets are paid.


**Other Violations**


- (a) Any person who shall violate any provision of this chapter for which a penalty is not otherwise established by this section shall be subject to a fine of twenty-five dollars (\$25.00).
- (b) In addition, pursuant to Maine Revised Statutes, Title 30-A, Part 2, Subpart 6-A, Chapter 187, Subchapter 5 (30-A MRS Section 4452), the Town may recover all costs of enforcement of this ordinance, including reasonable attorney's fees.


**SECTION F-2 ENFORCEMENT**

This ordinance shall be enforced by the Town of Southwest Harbor Police Department, or by any other duly appointed agents of the Town.

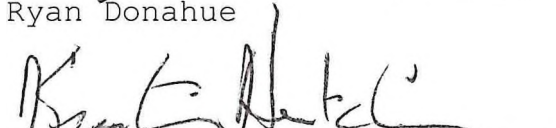
Voted and approved this 17<sup>th</sup> day of July, 2018

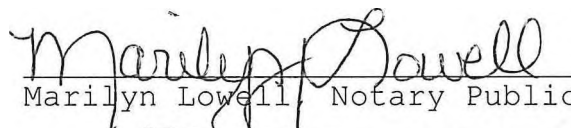
  
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Chairman, Chad Terry

  
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Vice Chairman, Lydia Goetze

  
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George Bellison

  
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Ryan Donahue

  
\_\_\_\_\_  
Kristin Hutchins

  
\_\_\_\_\_  
Marilyn Lowell, Notary Public

Marilyn J. Lowell  
Notary Public  
State of Maine  
My Comm. Exp. 1-12-2021

**An Ordinance to Establish  
The Southwest Harbor Planning Board**

**May 8, 1990  
Revised: January 2, 2003**

## AN ORDINANCE TO ESTABLISH THE SOUTHWEST HARBOR PLANNING BOARD

### 1. Establishment:

Pursuant to Maine Constitution Article VIII – A, Part 2., Section 1 and Title 30-A, MRSA para. 3001, the Town of Southwest Harbor hereby establishes the Southwest Harbor Planning Board.

### 2. Appointment

- a. Board members shall be appointed by the Board of Selectmen and sworn by the Town Clerk.
- b. The Board shall consist of 7 members
- c. The members shall be residents of the Town of Southwest Harbor
- d. The terms of members shall be for five (5) years; the initial appointments shall be such that the terms of office of no more than two (2) members shall expire in any single year.
- e. When there is a permanent vacancy, the Board of Selectmen shall within sixty (60) days of its occurrence appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a resident of the Town, or when a member fails to attend four (4) regular meetings without prior notification, or fails to attend at least 75% of all meetings during the preceding twelve (12) month period. When a vacancy occurs, the Chairman of the Board shall immediately so advise the Board of Selectmen in writing. The Board may recommend to the Board of Selectmen that the attendance provision be waived for cause, in which case no vacancy will then exist until the Board of Selectmen disapprove the recommendation. The Board of Selectmen may remove members of the Planning Board by unanimous vote, for cause, after notice and hearing.
- f. A Town Officer may not be a member.
- g. The Board of Selectmen shall provide a recording secretary to record the minutes at all public hearings. The recording secretary shall not be a member of the Board.

### 3. Organization and Rules

- a. The Board shall elect a Chairman, a Vice-Chairman, and a Secretary from among its members and create and fill such other offices as it may determine. The term of all officers shall be one ( 1 ) year with eligibility for re-election.
- b. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged.
- c. The Chairman shall call at least one regular meeting of the Board each month.
- d. No meeting of the Board shall be held without a quorum consisting of four (4) members.

- e. The concurring votes of at least four (4) members shall be necessary to constitute a valid action of the Board.
- f. The Board shall adopt rules for transaction of business and the Secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. All records shall be deemed public and may be inspected at reasonable times.

#### 4. Duties; Powers

- a. The Board, or a part thereof, may be designated by the Board of Selectmen as part of the local planning committee whose general responsibility is for the development and maintenance of a Comprehensive Plan (as defined by Title 30, para 4960 – C0 and for the initial revision to the existing zoning ordinance to reflect the Plan. The Board shall thereafter periodically review and make recommendations to the Board of Selectmen for revisions to the Comprehensive Plan.
- b. The Board shall prepare and update its own By-laws.
- c. The Board shall review all requests for subdivision approval.
- d. The Board shall review all requests for Site Plan Review.
- e. The Board shall review and act upon all requests covered by Shoreland Zoning.
- f. The Board shall administer and enforce the Floodplain Management Ordinance, and shall review the maps to determine their accuracy.
- g. The Board shall perform such duties and exercise such powers as are provided by Southwest Harbor Ordinances and the Laws of the State of Maine.
- h. The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

#### 5. Amendments to this Ordinance

- a. This Ordinance may be amended by a majority vote of the voters present at town meeting.
- b. Proposed amendments may be submitted to the Board of Selectmen by the Planning Board or by legal petition.
- c. At least thirty (30) days before town meeting the Planning Board shall hold a public hearing on the proposed change. At least seven (7) days notice in a newspaper with local circulation must be given before the public hearing.
- d. The Planning Board shall report in writing to the Board of Selectmen its opinion on the desirability of the proposed change, which opinion shall represent the vote of not less than four (4) members of the Board.

# **POLYSTYRENE FOAM FOOD SERVICE CONTAINER ORDINANCE**

## **1. PURPOSE:**

It is in the best interests of the citizens of and visitors to the Town of Southwest Harbor to protect the environment and natural resources of the Town and the State of Maine and the bodies of water within and adjacent to the Town by prohibiting the use and distribution of polystyrene foam food service containers.

Therefore the purpose of this Ordinance is to ban the use of polystyrene foam food service containers to reduce litter, to minimize impact on the Town Transfer Station while increasing recyclables, and to reduce the environmental impact caused by the use of polystyrene foam food service containers.

## **2. AUTHORITY:**

This Ordinance is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VII, Part 2, Section 1, the provisions of Title 30-A M.R.S. Chapter 141, and the general power of municipalities to enact police power ordinances.

## **3. DEFINITIONS:**

**ESTABLISHMENT:** A person or entity engaging in the sale or distribution of Prepared Food or beverages to consumers. This includes, but is not limited to, retail vendors of food or beverages, restaurants, take-outs, schools, hospitals, religious institutions, governmental institutions, community centers, markets, temporary and/or seasonal vendors and on-site events.

**FOOD PACKAGER:** Any person who places food in packaging materials for the purpose of retail sale of those products.

**POLYSTYRENE FOAM:** Expanded and extruded polystyrene foam and blown polystyrene, generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons. This does not include oriented (clear) polystyrene.

**POLYSTYRENE FOAM FOOD SERVICE CONTAINER:** Any food container made, in whole or in part, of polystyrene foam and used to package or hold food or beverage for onsite or offsite consumption.

**PREPARED FOOD:** Food or beverages which are served or sold at an establishment having been either previously prepared elsewhere or prepared at the establishment.

## **4. RESTRICTIONS:**

A. No Establishment in the Town of Southwest Harbor shall serve or sell prepared food in – and no Food Packager shall package food in – polystyrene foam food service containers.

B. No party shall sell or distribute polystyrene foam food service containers within the Town of Southwest Harbor.

## **5. EXEMPTIONS:**

A. Items pre-packaged in polystyrene foam food service containers outside the Town of Southwest Harbor may be sold without repackaging those items.

B. Uncooked meat and seafood may be sold in polystyrene foam food service containers.

C. Items to be shipped to points outside Southwest Harbor may be packaged in polystyrene foam food service containers for shipping.

D. A Retail Vendor or Food Packager shall be exempt from the provisions of this Ordinance in a situation deemed to be an emergency by the Town Select Board, for the immediate preservation of the public health and safety.

## **6. VIOLATIONS AND ENFORCEMENT**

A. The Town Manager or his/her designee(s) shall have the primary responsibility of the enforcement of this Ordinance. If the Town Manager or his/her designee(s) determines that a violation of the Ordinance has occurred, a written warning notice shall be issued to the Store. If an additional violation occurs after a written warning has been issued, the Town Manager or his/her designee shall issue a written Notice of Violation (NOV) and shall impose a penalty as set forth below.

B. Violations of this Ordinance shall be punishable by fines as follows:

1. A fine not exceeding \$100 for the first written NOV violation in a one-year period.
2. A fine not exceeding \$200 for the second and each subsequent written NOV in a one-year period. Each day that a violation occurs shall be considered a subsequent violation.
3. Fines are payable within 15 days of receipt of written notice of violation.

## **7. APPEALS**

Any decision, action, or inaction pertaining to this Ordinance may be appealed to the Maine Superior Court (Hancock County) within 30 days of the decision, action or inaction.

## **8. SEVERABILITY**

In the event any portion of this Ordinance shall be found to be invalid by a court of competent jurisdiction, the remaining portions of the Ordinance shall remain in effect.

## **9. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective on April 22, 2019.



**ROAD ORDINANCE**

**OF THE TOWN OF SOUTHWEST HARBOR**

Approved 03/04/1985  
Amended through 05/04/2010

Attest a true copy



Beatrice D. Grinnell  
Town Clerk

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## ROAD ORDINANCE OF THE TOWN OF SOUTHWEST HARBOR

### **SECTION I. AUTHORITY**

This Ordinance shall be entitled “Road Ordinance of the Town of Southwest Harbor” and is enacted pursuant to Title 30-A M.R.S.A. Section 3001.

### **SECTION II. DEFINITION OF ROAD**

For the purpose of this Ordinance a road is defined to be: a route or tract 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.

### **SECTION III. DEFINITION OF TOWN ROAD CLASSIFICATION**

- A. Arterial – a major traffic way for travel between and through the Town (Example: Route 102 and 102A)
- B. Collector – “collects” the traffic to and from the arterial roads to local access ways. (Example: Freeman Ridge Road)
- C. Local – affords direct access to homes or places of business; designed to discourage through traffic.
- D. Classification Determination – The classification of proposed Town Way shall be made by the Planning Board after its consideration of land use and the Comprehensive Plan of the Town. Said determination may be made prior to the formal application to the Board of Selectmen, after submission of all information that may be required.

### **SECTION IV. CONDITIONS OF ACCEPTANCE**

#### A. General

The Board of Selectmen shall not lay out a road as a Town Way, nor shall it submit a warrant containing an article to a Town meeting for the purpose of acceptance of a road as a Town Way until and unless the road has been designed and constructed in accordance with the provisions of this Ordinance.

#### B. Subdivision

The Planning Board shall not approve any subdivision plan containing a road proposed to be a Town Way unless the proposed the proposed road is designed and constructed in accordance with this Ordinance. The Planning board is not precluded by this Ordinance from adopting additional or more stringent regulations governing road design and construction within subdivisions pursuant to Title 30 – A M.R.S.A. Sections 4401-4407.

#### C. Design and Construction Plans

1. Plans and illustrations submitted shall be designed and prepared by a professional engineer registered in the State of Maine.

2. utilities shall be installed prior to the final road construction phase so as to prevent re-excavation of the finished road.
3. Prior to the commencement of each major phase of construction, the CEO shall be notified for inspection.
4. Upon completion of road construction and prior to a vote by the Board of Selectmen to submit a proposed Town Way to a Town Meeting, a written certification signed by a professional engineer registered in the State of Maine, shall be submitted to the Board of Selectmen at the expenses of the applicant, certifying that the proposed Town Way meets or exceeds the design and construction requirements set forth herein. "As built" plans shall be submitted to the Town.

## SECTION V. PETITION AND APPLICATION TO LAY OUT A ROAD

- A. The Board of Selectmen or its agent may on petition and application, lay out a road.
- B. The following procedure shall be followed:
  1. Petition and Application – Any resident of Southwest Harbor may petition the Board of Selectmen to lay-out, alter, widen, or extend either an existing or proposed Town Way. The petition is necessary to give the Board of Selectmen jurisdiction. In addition to the petition, an application shall also be submitted in accordance with Section V of this Ordinance.
  2. Notice of Proposed Location – The Board of Selectmen must post notice of their intention to locate a proposed Town Way. The officers may locate the Way personally or by agent. Notice must be posted for seven (7) 7-days in three (3) 3 locations including the vicinity of the proposed Way and two (2) 2 public places in the Town (The Clark Point Post Office and the ~~Town Office Manset Post Office~~). The Town shall cause this information to be published twice in a newspaper of general circulation within the Town. A fee of \$50.00 will be charged to the applicant to cover this cost.
  3. Location and Determining the Town Way – At the time and place designated in the notice the Board of Selectmen must meet to locate the proposed town Way. The Selectmen may also meet at the road informally and prior to posting the notice. The Board of selectmen may be represented by an agent at the formal meeting if the acts of the agent are ratified by them. The Board of Selectmen and their agent are not bound by the description in the petition but may adopt measures suitable to attaining the goals sought by the petition. The Board of Selectmen must determine whether the road is to be proposed as a Town Way.
  4. Return and Recording – The Board of Selectmen must make written return of their proceeding containing the bounds and measurements of the proposed Town Way and the damage allowed to each person for land taken. The return should also show that notice was properly posted and that the road was determined to be a proposed Town Way. In order for the proposed Town Way to be legally established the return must be filed with the Town Clerk.

5. Warrant – After the proposed Town Way has been located and the return has been filed, a warrant article shall be filed, such ~~from~~ form to be determined by the Board of Selectmen.
6. Report for Acceptance by the Town - At the town Meeting legally called for the purpose of accepting the proposed Town Way, the Board of Selectmen shall make their report. A majority of the legally established voters of the Town of Southwest Harbor shall either accept or reject the proposed Town Way.

## SECTION VI. APPLICATION REQUIREMENTS

### A. Application Form

1. Applicant's name, address, telephone number and the date.
2. Names of the owners of record of the land upon which the proposed Town Way is located.
3. A statement of any legal encumbrance on the land upon which the proposed Town Way is located.
4. The anticipated beginnings and ending dates of each major phase of the proposed Town Way construction.
5. A plan view, centerline view, and typical cross-section view of the proposed Town Way.

### B. Information to be included on the Plans

1. date, scale of the plan, and direction of magnetic north;
2. beginning and ending points of the proposed Town Way (s);
3. complete curve data, centerline gradients, and turning radii at intersections and termini of the proposed Town Way.
4. limits and location of any proposed sidewalks and curbing;
5. existing buildings and established landmarks placed in relation to the proposed Town Way(s);
6. dimensions (both linear and angular) necessary to locate subdivisions, lot easements, and building lines;
7. lots as laid out and numbered on the proposed Town Way, showing the names of all owners of abutting property;
8. all natural waterways on land contiguous to the road;

9. kind, size, location, profile, and cross section of all existing and proposed drainage structures and their location with respect to the existing natural waterways;
10. location of any existing and proposed overhead and underground utilities, to include but not limited to the following:

- water supply
- sanitary sewer system
- street lights
- fire hydrants
- electric power line poles or underground vaults
- telephone line poles or underground vaults

- C. Subdivision Application – Subdivider shall submit to the Planning Board all information concerning proposed town Ways required in paragraphs A and B above as an integral part of their plot plan and application for subdivision approval as required by the Planning Board if the subdivision contains roads proposed as Town Ways.
- D. Review and Comment – The Board of Selectmen shall after receipt of the application and petition to lay out a road for acceptance as a Town Way notify the Planning Board for its review and written comment. Upon receiving notification, the Planning Board shall confirm in writing the classification of the proposed Town Way. The Planning Board, after receipt of an application for subdivision approval which includes proposed town Ways, shall notify the Board of Selectmen requesting their review and written comment.

**SECTION VII. ROAD DESIGN STANDARDS**

All proposed Town Ways shall be designed and constructed to meet the design standards of this section and the minimum standards of MDOT. Any proposed arterial Town Ways or additions to the arterial Town Ways shall be designed to the Maine State specifications.

A. Town Road Standards

	<u>Collector</u>	<u>Local</u>
Minimum right-of-way width	50'	50'
Minimum pavement width	24'	18'
Sidewalk width (when applicable)	5'*	5'*

The centerline of the road shall be the centerline of the right-of-way.

\*The Planning Board may reduce this requirement if space is unavailable.

B. Design Specifications

Minimum grade	.5%
Maximum grade	10%
Minimum centerline radius	200'
Minimum tangent between curves of Reverse alignment	200'
Roadway crown	¼" per foot
Minimum angle of street intersection	60 degrees
Maximum grade at intersection (within 50' of intersection)	3%
Minimum width of shoulders (each side)	3

Minimum sight distances	200'
Minimum radii of intersection	
Pavement width 24' or greater	30'
Pavement width less than 24'	15'

C. Dead –end Roads

Standards as listed under paragraph A shall be applicable to dead-end proposed Town Ways. In addition, they shall be constructed with either a turning circle or a hammerhead. A hammerhead may be used for road lengths up to 800'. A road longer than 800' must have a turning circle.

Turning Circle

Hammerhead

Outer edge of pavement	50' radius	Edge of hammerhead	60' across
Inner edge of pavement	30' radius	Edges of hammerhead	20' across

D. Grades, Intersections, and sight Distances

1. Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining grade standards.
2. All changes in grade shall be connected by vertical curves so that clear visibility shall be provided for distances as specified in above standards.
3. Intersections of roads shall be at angles as close to 90 degrees as possible and in no case shall 2 roads intersect at an angle smaller than 60 degrees. To this end, where one road approaches another, between 60 – 90 degrees, the new road should be curved approaching the intersection.
4. Cross (four-cornered) road intersections shall be avoided insofar as possible, except s shown on the Comprehensive Plan, or at important traffic intersections. A minimum distance of at least 200 feet shall be maintained between center lines of offsetting intersecting roads.
5. Road intersections and cures shall be so designed as to permit adequate visibility for both pedestrian and vehicular traffic. That portion of any corner lot which is necessary to allow 25 foot sight lines between intersecting roads shall be cleared of all growth (except isolated trees) and obstructions above the level 3' higher than the center-line of the road. If directed, ground shall be excavated to achieve visibility.

E. Sidewalks (where installed)

1. Bituminous or concrete sidewalk
  - a. The aggregate sub-base course shall be 12" thickness.
  - b. The maximum size stone shall not be longer than 4".
  - c. The hot bituminous pavement surface shall be a 2" thickness, after compaction; the concrete paved surface shall be 4:.

2. Curbing shall be quarried granite stone, bituminous asphalt, or concrete, and shall be installed on a thoroughly compacted gravel base of 6" minimum. The Town prefers quarried granite.

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, driveway or ditch. To accomplish this, the following shall apply:

a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

<u>Road Grade (Percent)</u>	<u>Spacing (Feet)</u>
<u>0 – 2</u>	<u>250</u>
<u>3 – 5</u>	<u>200-135</u>
<u>6 – 10</u>	<u>100 – 80</u>
<u>11 – 15</u>	<u>80 – 60</u>
<u>16 – 20</u>	<u>60 – 45</u>
<u>21 +</u>	<u>40</u>

b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.

c. On road sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

**SECTION VIII. ROAD CONSTRUCTION STANDARDS**

A. Minimum Thickness of materials After Compaction

<u>Road Materials</u>	<u>Minimum Requirements</u>
Aggregate sub-base	18"
Crushed aggregate base course	3"
Hot bituminous pavement (after compaction)	
Thickness (total)	3/4"
Base course	1 1/4 "

B. Preparation

1. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush and other objectionable material.



2. Tree stumps and other organic materials shall be removed to a depth of 2' below the sub-grade of the roadway. Rock and boulders, when encountered, shall be sacrificed to sub-grade. Soils which are designated as being not suitable for roadways by the Soils Map shall be removed from the road site to a depth of two feet below the sub-grade, and shall be replaced where necessary with materials meeting the specifications for gravel sub-base.
3. All side slopes shall not be steeper than a slope of 3' horizontal to 1' vertical, graded, loamed, (3" compacted) and seeded according to the specifications of an erosion and sedimentation control plan.

C. Bases and Pavement

1. Bases
  - a. Aggregate sub-base shall not contain particles of rick exceeding 5" in any dimension.
  - b. Aggregate base shall not contain particles of rick that will not pass the 2" square sieve.
2. Pavement
  - a. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and to a neat, even, vertical joint.
  - b. Minimum standards for the base course of hot bituminous pavement shall meet the MDOT specifications for plant mix grade B with an aggregate size no more than 3/4" maximum.
  - c. Minimum standards for the surface course of hot bituminous pavement (grading C-1) shall meet the MDOT specifications of plant mix grade C with an aggregate size 1/1" maximum.
3. Curbs and gutters
  - a. Road curbs and gutters shall be installed as required by the Board of Selectmen.
  - b. Curbs shall be vertical except when sloped curbs are specifically allowed by the Board of Selectmen.

**SECTION IX. STORM DRAINAGE DESIGN STANDARDS**

- A. Adequate provision shall be made for disposal of all storm water collected in roads and areas tributary to the road system and underground water through ditches, culverts, under-drain and/or storm water drainage systems.
  1. All storm water systems shall be designed to meet the criteria of a twenty-five year storm based on rainfall data from weather bureau records at the reporting station closest to Southwest Harbor.
  2. Appropriate conveyances for outlets to drainage systems must be provided.

3. The minimum pipe size for any storm drainage pipe shall be 15". The Road Foreman may at his discretion change the pipe size due to unusual circumstances. Maximum trench width at the pipe crown shall be 2:. Pipe shall be bedded in a fine granular material whenever possible.
- B. Upstream drainage shall be accommodated by an adequately sized system for existing conditions and future potential development in the upstream drainage area or areas tributary to the proposed Town Way. The adequacy of the proposed system(s) shall be determined by the Board of Selectmen or their authorized representative.
- C. Existing or future downstream drainage requirements shall be studied to determine the effect of proposed drainage. The applicant shall demonstrate to the satisfaction of the Town that the storm drainage will not, in any way, overload existing or future storm drainage systems downstream from the proposed road.
- D. Where open ditches, channels, streams, or natural drainage courses are used either to collect or discharge storm water, adequately sized perpetual easements shall be provided, and appropriate erosion control measures taken. No storm water will be permitted to drain across a road or across an intersection.
- E. Where subsurface soils are of the nature to require an under-drainage system, under-drains shall be installed to properly drain all springs or areas where the ground water level is too high and would cause a hazard to the stability of the roadway base.

## **SECTION X. STORM DRAINAGE CONSTRUCTION STANDARDS**

- A. All designs and materials utilized for storm drain construction shall be in conformity with current State of Maine DOT Specifications for Highways and Bridges.
- B. General construction requirements:
  1. Trenching shall be accomplished in accordance with all appropriate state and federal safety requirements.
  2. Drain alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board of Selectmen.
  3. Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. In straight runs, manholes shall be placed at a maximum of 400' intervals.
  4. Where necessary, drain outlets shall be terminated in an end wall of concrete construction, or shall be rip rapped to prevent erosion or other appropriate measures taken. Facilities for energy dissipation shall be provided where necessary.

## **SECTION XI. ADDITIONAL IMPROVEMENTS AND REQUIREMENTS**

- A. Soils

1. Grades or roads shall conform as closely as possible to the original topography. Where soils and ground water investigations reveal conditions which are marginal for road construction, or where soils are shown to be poor or very poor for road location on the Soils Map, the
2. Topsoil shall be considered to be a part of the development and as such shall not be removed from the site but should be used instead for final landscaping of the roadway.

B. Landscaping

1. Planted Strip Areas
  - a. Base material shall be removed prior to replacement of topsoil – 3” of compacted topsoil (loam) free of stones over 1” in diameter, sods and clay.
  - b. Planted strips to be limed at the rate of 10 lbs/100 sq. ft. and fertilized at the rate of 2 lbs. of a 10-10-10 fertilizer/100sq. ft. or equivalent and seeded according to the specifications of the Hancock County soil Conservation Office.
2. When required by the board of Selectmen or their designated representative, trees shall be planted in the strip of all new roads.
  - a. 40-60- intervals: birch, beech, linden, oak, pine, maple, and basswood
  - b. less than 50’ intervals: Hawthorn, flowering crabapple, etc.

C. Sight Vision

The line shall be unobstructed at intersections, for a distance of 5’ from the right-of-way.

D. Erosion Control

Procedures shall be undertaken, both during preparatory, construction and cleaning stages, to prevent soil erosion and water pollutions in accordance to the current Maine Erosion and Sediment Control BMP’S (Best Management Practices).

E. Clean-up

Following road construction, the developer and contractor shall conduct a thorough clean-up of stumps and other debris from the entire road right-of-way.

F. Monuments

Monuments shall be set at all road corners and at angle points and angle points of curve in each road.

G. Road Name

Roads which form an extension to existing road of abutting or neighboring properties shall bear the same name. names of new roads shall not duplicate, n or bear phonetic resemblance

to the names of existing roads within the Town and shall be subject to the approval of the Board of Selectmen.

## **SECTION XII. PERFORMANCE BOND**

At the time of the submission of the application, the applicant may be requested to submit a performance bond.

## **SECTION XIII. VARIANCE AND WAIVER**

- A. In its review of proposed roads, the Board of Selectmen may vary or waive those requirements herein which are unnecessary.
- B. Where extraordinary and unnecessary hardship may result, or due to special circumstances, those roads existing prior to the acceptance of this Ordinance may have certain requirements of this Ordinance varied and/or waived by the Board of Selectmen, subject to appropriate conditions.
- C. In granting variances and/or waivers, the Board of Selectmen shall require such conditions as will, in its judgment, secure substantially, the objectives of the requirements so varied or waived.

## **SECTION XIV. APPEALS**

Any person aggrieved by a decision of the Board of Selectmen or pursuant to the Ordinance may file an appeal to the Board of Appeals within 30 days of a written notice of denial.

## **SECTION XV. SEVERABILITY**

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

## **SECTION XVI. REPEAL**

- A. All provisions of prior ordinances of the Town that are inconsistent with this Ordinance are hereby repealed; however, nothing in this Ordinance shall be construed to prevent the application of more stringent standards in the design or construction of roads or the use of improved methods or higher quality materials. The determination of the acceptability of other standards, methods, or materials shall be made by the Board of Selectmen.
- B. This Road Design Ordinance hereby makes void the “**STREET DESIGN AND CONSTRUCTION STANDARDS ORDINANCE FOR THE TOWN OF SOUTHWEST HARBOR**”, effective July 1, 1985.

# **SOUTHWEST HARBOR SEWER ORDINANCE**

## **REGULATION OF SEWER USE**

### **FOR THE TOWN OF SOUTHWEST HARBOR**

**Approved August 22<sup>nd</sup>, 1990  
Amended through May 3<sup>rd</sup>, 2011**

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**Beatrice D. Grinnell, Town Clerk**

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## **SECTION 1 - GENERAL PROVISIONS**

1.1 **Purpose and Policy** - This ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works for the Town of Southwest Harbor and enables the Town to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations* [CFR] Part 403). The objectives of this ordinance are:

- a. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- b. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- c. To protect both the general public and Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment;
- d. To promote reuse and recycling of industrial wastewater and sludge;
- e. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- f. To enable the Town to comply with its Maine Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all Residents of the service area of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

1.2 **Administration** - Except as otherwise provided herein, the Superintendent shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to, or duties imposed upon the Superintendent may be delegated by the Superintendent to a duly authorized employee.

## **SECTION 2 – ABBREVIATIONS & DEFINITIONS**

2.1 **ABBREVIATIONS:** The following abbreviations, when used in this ordinance, shall have the designated meanings:

**AASHTO** shall mean American Association of State Highway and Transportation Officials.

**ANSI** shall mean American National Standards Institute.

**APHA** shall mean American Public Health Association.

**ASTM** shall mean American Society of Testing and Materials.

**AWWA** shall mean American Water Works Association.

**BOD** shall mean Biochemical Oxygen Demand  
**BMP** shall mean Best Management Practice  
**BMR** shall mean Baseline Monitoring Report  
**CFR** shall mean Code of Federal Regulations  
**CIU** shall mean Categorical Industrial User  
**COD** shall mean Chemical Oxygen Demand  
**DEP** shall mean the Maine Department of Environmental Protection  
**EPA** shall mean U.S. Environmental Protection Agency  
**gpd** shall mean gallons per day  
**IU** shall mean Industrial User  
**LPI** shall mean Local Plumbing Inspector  
**mg/l** shall mean milligrams per liter  
**MEPDES** shall mean Maine Pollutant Discharge Elimination System  
**NPDES** shall mean National Pollutant Discharge Elimination System  
**NSCIU** shall mean Non-Significant Categorical Industrial User  
**POTW** shall mean Publicly Owned Treatment Works  
**RCRA** shall mean Resource Conservation and Recovery Act  
**SIU** shall mean Significant Industrial User  
**SNC** shall mean Significant Noncompliance  
**TSS** shall mean Total Suspended Solids  
**U.S.C.** shall mean United States Code  
**WEF** shall mean Water Environmental Federation

2.2 **DEFINITIONS:** Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance will be as follows:

**Act or “the Act”** shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

**Approval Authority** shall mean the State of Maine

**Authorized or Duly Authorized Representative of the User:**

a. If the User is a corporation:

(1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or



(2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- b. If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- c. If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- d. The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.

**Biochemical Oxygen Demand or BOD** shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Centigrade, expressed in parts per million by weight.

**Best Management Practices or BMPs** shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

**Building** shall mean a structure built, erected and framed of component structural parts designed for the housing, shelter, enclosure, or support of persons, animals or property of any kind.

**Building Contractor** shall mean any person, persons, partnership or corporation who undertakes 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 within the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

**Building Sewer** shall mean the extension from the building drain to the public sewer, or other place of disposal, also called the house connection.

**Categorical Pretreatment Standard or Categorical Standard** shall mean any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

**Categorical Industrial User** shall mean an Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

**Combined Sewer** shall mean a sewer receiving both surface runoff and sewage.

**Contractor** shall mean any person, firm or corporation approved by the Governing Body to do work in the Town.

**Cooling Water** The water discharged from any use such as air conditioning, cooling, or refrigeration, or to which the only pollutant added is heat.

**DOT Handbook** is defined as the State of Maine, Department of Transportation, Standard Specifications, Highways and Bridges publication, most recent edition.

**Daily Maximum** shall mean the arithmetic average of all effluent samples for a pollutant collected during a calendar day.

**Daily Maximum Limit** shall mean the maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

**Debt Service** shall mean the costs associated with repayment of a loan, to include both principal and interest.

**Developer** shall mean any person, persons, partnership or corporation who undertakes to construct, as the result of an approved plan, more than one housing unit on a given tract or land subdivision, or any commercial or industrial facility.

**Dwelling Unit** shall mean a room or group of rooms designed and equipped with cooking, sleeping and toilet facilities exclusively for use as living quarters for only one (1) family. The term includes manufactured housing and mobile homes, but not recreational vehicles or motel units. Each unit of a multi-family or condominium unit shall be considered a single dwelling unit. For purposes of this ordinance, cabins and cottages shall be considered as dwelling units.

**Easement** shall mean an acquired legal right for the specific use of land owned by others.

**Engineer** shall mean the Professional Engineer retained by the Town. In the event the Town has not retained an Engineer, the term "Engineer" as used herein will be construed to mean the Board of Selectmen of the Town of Southwest Harbor.

**Equivalent User** shall be based on design flows and concentrations for a 3 bedroom house as specified in the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules.

**Existing Source** shall mean any source of discharge that is not a "New Source."

**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 pre-treatment facility. Wastewater shall be considered free of floatable oil if it is properly pre-treated and the wastewater does not interfere with the collection system.

**Garbage** shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

**Governing Body** shall mean the duly elected Board of Selectmen of the Town of Southwest Harbor or their authorized deputy or representative.

**Grab Sample** shall mean a sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

**House Connection** shall mean the extension from the building drain to the public sewer, or other place of disposal, also called Building Sewer.

**Indirect Discharge or Discharge** shall mean the introduction of pollutants into the POTW from any non-domestic source.

**Instantaneous Limit** shall mean the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

**Interference** shall mean a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the Town's MEPDES permit or of the prevention of sewage sludge use or disposal in compliance with applicable regulations. Such regulations shall consist of, but not be limited to Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

**Local Limit** shall mean specific discharge limits developed and enforced by the Town upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

**Manager** shall mean the Town Manager of Southwest Harbor, or the individual designated by the Governing Body to perform this function, or the authorized deputy, agent, or representative of this individual.

**Mass Limitations or Mass Based Standards** shall mean a discharge limit that is measured in a mass unit such as pounds per day.

**May** is permissive.

**Medical Waste** shall mean isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

**Minimum Charge** – is that portion of the individual user fee related to capital expenditures and retirement of debt service, without regard to the quantity of wastewater treated.

**Monthly Average** shall mean the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

**Monthly Average Limit** shall mean the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

**Natural Outlet** shall mean any outlet into a watercourse, ditch, pond, lake, or other body of surface or ground water.

**New Source** shall mean:

- a. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:
  - (1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  - (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
  - (3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.
- b. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- c. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:
  - (1) Begun, or caused to begin, as part of a continuous onsite construction program
    - (a) any placement, assembly, or installation of facilities or equipment; or
    - (b) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

- (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

**Non-contact Cooling Water** shall mean water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

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

**Pass Through** shall mean a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's MEPDES permit, including an increase in the magnitude or duration of a violation.

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

**pH.** shall mean a measure of the acidity or alkalinity of a solution, expressed in standard units.

**Plumbing Inspector** shall mean the individual duly appointed by the Board of Selectmen who is responsible to perform duties as outlined in Title 30, Section 3222 of the Maine Revised Statutes.

**Pollutant** shall mean dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

**Pretreatment** shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

**Pretreatment Requirements** shall mean any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

**Pretreatment Standard or Standards** shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

**Prohibited Discharge Standards or Prohibited Discharges** shall mean absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 9.3 of this ordinance.

**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 ½ inch in any dimension.

**Property Line** shall mean the property boundary 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 building sewers connect to a public sewer in a sewer right-of-way.

**Public Sewer** shall mean a common sewer owned, operated, and maintained by public authority, or governmental agency.

**Publicly Owned Treatment Works or POTW** shall mean a treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

**Ready to Serve Charge** shall mean a charge levied on facilities within the service area as defined in Section 3.1 which are not connected to the public system and which have not been granted an exception by the Board of Selectmen.

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

**SCH 40:** SCH (schedule) 40 is the designation for polyvinyl chloride (PVC) pipe typically specified for use as gravity sewer lines inside a structure e.g. home, business, etc. and to a distance equal to 10 feet away from the outside face of the structure. It is typically installed to a maximum depth as recommended by the manufacturer. The SCH 40 designation defines the wall thickness of the pipe. Generally accepted specifications associated with SCH 40 pipe include, but are not necessarily limited to, the following: The pipe shall conform to ASTM D -2665 for PVC plastic drain, waste and vent pipe. PVC material used in the manufacturing of this pipe shall conform to ASTM D – 1784 specification for Type 1, Grade 1 material.

**SDR 35:** SDR (standard dimension ratio) 35 is the designation for polyvinyl chloride (PVC) pipe typically specified for use as gravity sewer lines installed to a maximum depth as recommended by the manufacturer. The SDR 35 notation defines the wall thickness of the pipe based on the relationship between the outside and the inside diameters of the pipe.

**Septic Tank Waste** shall mean any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

**Service Area** – See Section 3.1.

**Sewage** shall mean human excrement and gray water (household showers, dishwashing operations, etc.).

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

**Shall** is mandatory.

**Significant Industrial User (SIU)** shall mean:

- a. An Industrial User subject to categorical Pretreatment Standards; or
- b. An Industrial User that:

- (1) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
  - (2) Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - (3) Is designated as such by the Town on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.
- c. Upon a finding that a User meeting the criteria in Subsection b. of this part, has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the Town may, at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

**Slug Load or Slug Discharge** shall mean any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Subsection 9.3 of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

**Standard Methods** shall mean the latest edition of the publication, Standard Methods for the Examination of Water and Wastewater, published by APHA, AWWA and WEF.

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

**Storm Water** shall mean any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

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

**Suitable Material** – In general, suitable materials for fill, backfill and embankment materials shall be composed of clean, fine earth, rock or sand, free from grass, roots, brush, or other vegetation. The following types of suitable materials are designated and defined as follows:

- a. Base Gravel: As described in section 703.06(a) Type A of the DOT Handbook.
- b. Sub-base Gravel: As described in Section 703.06(b) Type D of the DOT Handbook.
- c. Common Borrow: Common borrow shall consist of earth, suitable for embankment construction, free from frozen material, perishable rubbish, peat and other unsuitable material. The moisture content shall be sufficient to provide the required compaction and stable embankment. In no case shall the moisture content exceed 4 percent above or below optimum. The optimum moisture content shall be determined in accordance with ASTM D698.
- d. Crushed Stone: Crushed stone shall be durable crushed rock consisting of the angular fragments obtained by breaking and crushing solid or shattered natural rock and reasonably free from thin, flat, elongated, or other objectionable pieces. It shall be reasonably free from sand, clay, loam, chemical decay, or deleterious materials and not more than one percent of

materials passing a No. 200 sieve will be allowed to adhere to the crushed stone. The stone shall meet the following gradation requirements:

- (1) ¾-inch crushed stone: 100% passing the 1-inch sieve; 95-100% passing the ¾ -inch sieve; 35-70% passing the ½-inch sieve; 0 – 25% passing the 3/8-inch sieve.
  - (2) 1 ½-inch crushed stone: 100% passing the 2-inch sieve; 95-100% passing the 1 ½ -inch sieve; 35-70% passing the 1-inch sieve; 0 – 25% passing the ¾-inch sieve.
- e. Sand: Sand shall conform to the gradation requirements as described in Section 703.01 of the DOT Handbook.
- f. Where any of the above materials are to be used for bedding materials, it shall further meet the following additional criteria: bedding material shall be so graded that 100% will pass a 1-inch screen and not more than 10% will pass a 200-mesh sieve. In the event abnormally unstable or wet conditions are encountered, bedding material shall be crushed stone.

**Superintendent** shall mean the person designated by the Manager to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance. The term also means a Duly Authorized Representative of the Superintendent.

**Total Suspended Solids or Suspended Solids** shall mean the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

**Town** shall mean The Town of Southwest Harbor.

**Unpolluted Water** is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater facilities provided.

**Unsuitable Materials** – Unsuitable materials for fill and backfill materials shall include soils which, when classified under the standard method for “Classification of Soils for Engineering Purposes”, ASTM D2487, fall in the classification of Pt, OH, CH, MH, or OL. Also, any soil, which cannot be made to conform with its intended use, shall be classified as unsuitable.

**User** shall mean an owner or occupant of real estate which is connected to the Town’s sewer or drain system.

**Wastewater** shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, businesses, buildings, institutions and industrial establishments, together with such ground, surface and storm waters, as may be present. Also termed “Sewage”.

**Wastewater Treatment Plant or Treatment Plant** shall mean that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

**Water Course** shall mean a channel in which a flow of water occurs, either continuously or intermittently.



## SECTION 3 – USE OF PUBLIC SEWERS REQUIRED

- 3.1 **Sewer Connection Required** – The owner of any house, building or property used for human occupancy, employment, recreation or other purpose, situated within the Town and abutting on any street, alley, or right-of-way, in which there is now located, or may in the future be located, a public gravity sanitary sewer of the Town is hereby required, at the Owner's 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 within 100 feet (30.5 meters) of the structure to be served. Provided, however, that where excavation of the public highway is otherwise prohibited by State law or regulation, or where unusual hardship exists due to the presence of ledge, incompatible elevations, or other causes, the Governing Body may grant exceptions upon specific application of the owner or lessee of such properties, with such conditions as the said Governing Body may impose.
- 3.2 **Unusual Industrial Wastewaters** – No statement contained in this Section shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment, subject to payment therefore by the industrial concern, provided that such agreements do not contravene any requirements of existing Federal or State laws and/or regulations promulgated there under, and are compatible with any User Charge in effect.

## SECTION 4 – UNLAWFUL DISPOSAL

- 4.1 **Unlawful Dumping** – It shall be unlawful for any person to place, deposit or permit to be placed or deposited in any unsanitary manner on public or private property within the Town of Southwest Harbor or in any area under the jurisdiction of said Town, any human or animal excrement, garbage or other objectionable waste, except for agricultural use.
- 4.2 **Unlawful Discharge** – It shall be unlawful to discharge upon the surface of the ground, or to any watercourse, either directly or through any storm sewer, within the Town or to any area under the jurisdiction of the Town, any sewage, industrial wastes, or other polluted water, except where suitable treatment has been provided in accordance with federal, state and local laws.
- 4.3 **Unlawful Sanitary Facilities** – 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 5 – PRIVATE WASTEWATER DISPOSAL

- 5.1 **On-Site System Required** – Where a public sanitary sewer is not available under the provisions of **Section 3.1**, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Article and the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules.
- 5.2 **Notification to Town** – Construction of private sewage disposal systems shall comply in all respects with requirements of the Maine State Plumbing Code. In addition, a written notice shall be filed with the Town Plumbing Inspector, giving notice and details of said installation.
- 5.3 **On-Site System Standards** – The type, capacities, location and lay-out of a private sewage disposal system shall comply with the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules and

the Minimum Lot Size Law (Maine Revised Statutes Annotated Title 12, Chapter 423-A). No private wastewater disposal system shall be permitted to discharge to any natural outlet.

- 5.4 **Holding Tanks** – The Selectmen are authorized and empowered to undertake, within the Town, control of the methods of disposal of holding tank wastewater and the collection and transportation thereof. All such rules and regulations adopted by the Selectmen shall be in conformity with the provisions herein, all other ordinances of the Town, all applicable laws, and applicable rules and regulations of the administrative agencies of the State of Maine.
- a. Holding tanks shall not be used for conversion from seasonal to full-time use or for new construction within the Shoreland Zone or the floodplain of a major watercourse.
  - b. The Selectmen have the right and power to fix, alter, change and collect rates, assessments and other charges in the area served by its facilities at reasonable and uniform rates as authorized by applicable law.
  - c. The collection and transport of all wastewater from any property utilizing a holding tank shall be done solely under the direction and control of a facility that holds an appropriate Maine State license and disposed at such site or sites as are approved by the Maine Department of Environmental Protection.
- 5.5 **Duties of Property Owners** – The owner of property that utilizes a holding tank shall:
- a. Maintain the holding tank in conformance with this or any other Ordinance of this Town, the provisions of any applicable law, the rules and regulations of the Town and any administrative agency of the State of Maine; and
  - b. Comply with all the provisions of the Maine State Subsurface Wastewater Disposal Rules.
- 5.6 **Alternative Disposal** – An alternative means of wastewater disposal shall meet first time system criteria. Replacement criteria shall not be considered.
- 5.7 **On-Site System Operation** – The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the Town.
- 5.8 **Connection Required** – At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in SECTION 3.1, connection shall be made to the public sewer in compliance with this Ordinance within ninety (90) days and any septic tanks, cesspools, or similar private sewage disposal facilities shall be abandoned and filled with suitable material or completely removed.
- 5.9 **Plumbing Inspector Authority** – No statement contained in this Article shall be construed to interfere with any additional requirements that may be imposed by the Plumbing Inspector.

## **SECTION 6 – BUILDING SEWERS AND CONNECTIONS TO PUBLIC SEWERS**

- 6.1 **Coordination with State Plumbing Code** – The provisions of this Article shall be deemed to supplement provisions of the State Plumbing Code with respect to building sewers and connections thereof to public sewers. In the event of conflicts between this Article and the State Plumbing Code, the more stringent shall apply. Permits and Fees stipulated hereunder are additional to any permits and/or fees, required under the State Plumbing Code.

6.2 **Building Sewer Permit Required** – No person shall uncover, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written building sewer permit as provided in SECTION 6.3 approved by the Director of Public Works. The building sewer permit application form shall be available at the Town Office. Any person proposing a new or additional discharge into the system, or a change in the volume or character of pollutants that are being discharged into the system shall be required to obtain a permit from the Director of Public Works. All proposed changes, additions and connections shall comply with Maine Revised Statutes Annotated, Title 38, Chapter 3, Subchapter 1.

6.3 **Types of Permits and Fee Requirement** – 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 special form furnished by the Town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent.

For residential permits, a permit application fee and a service fee shall be paid to the Town Treasurer for each single residential sewer and for each additional dwelling unit at the time an application is filed, as indicated on the permit application form. In addition, the owner shall pay an inspection fee for each service connection made.

The Board of Selectmen shall fix a permit application, service, and inspection fees for each commercial, industrial, or other non-residential building, after recommendation of the Manager and Director of Public Works based on the size and nature of the operation proposed in such commercial, industrial or other non-residential building as compared to the demands of a residential structure.

Any proposed change or additional discharge shall be subject to supplementary fees based upon the predicted maximum gallon per day increase due to the additional volume being discharged into the system as illustrated in the State of Maine Wastewater Disposal Rules, “Design Flows for Facilities” tables.

6.4 **Individual Building Sewers Required** – A separate and independent building sewer shall be required for every building requiring a sewer connection except where one building stands at the rear of another or on an interior lot where no public sewer is available nor can such 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. Where dwelling units are owned by different people, individual owners will be billed.

6.5 **Use of Existing Building Sewers** – Existing building sewers may be used only when they are determined by the Town to meet all requirements of this ordinance. When existing buildings which are connected to the public sewer are abandoned or destroyed, the building sewer shall be capped at the edge of the public way or easement containing public sewer, in the presence of a representative of the Town.

6.6 **Building Sewer Material** – The building sewer shall be service weight cast iron soil pipe and fittings; cast iron NO-HUB, bitumastic coated; PVC sewer pipe meeting the requirements of ASTM D 3034-08; or other material approved by the Town.

6.7 **Building Sewer Diameter** – The size and slope of the building sewer shall be subject to the approval of the Town, but in no event shall the diameter be less than four (4) inches, nor shall the slope of the pipe be less than one-eighth (1/8) inch per foot.

- 6.8 **Building Sewer Testing** – Pneumatic testing of the building sewer installation may be required at the discretion of the Town’s LPI.
- 6.9 **Building Sewer Depth** – Whenever possible, the building sewer shall be brought to the building at an elevation sufficient to avoid the need for protection from frost, but in no event shall be less than three (3) feet deep. The building sewer shall be laid at a uniform grade and in straight alignment insofar as possible. Changes in direction shall be constructed only with approved pipe and fittings. The ends of building sewers, which are not connected to the building drain of the structure for any reason, shall be sealed against infiltration with a suitable stopper, plug or other approved means.
- 6.10 **Private Lift Station Required** – In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage or industrial wastes carried by such drain shall be lifted by approved artificial means and discharged to the public sewer system at the expense of the owner.
- 6.11 **Building Sewer Excavation** – All excavations required for the installations of a building sewer shall be open trench work unless otherwise approved by the Superintendent. Pipe laying and backfill shall be performed in accordance with the appropriate ASTM specifications except that no backfill shall be placed until the work has been inspected and except that trench width measured at the top of the installed pipe shall not exceed thirty-six (36) inches.
- 6.12 **Prohibited Connections to Building Sewer**
- a. No person shall make connection of roof down spouts, sump pumps, exterior foundation drains, areaway drains, cellar drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer, unless such connection is approved by the Town for purposes of disposal of polluted drainage water.
  - b. Where such connections already exist, the Owner must, after notification by the Town, and at the Owner’s expense, remove said connections and provide proof of such to the Town. The Board of Selectmen may establish and levy a storm water disposal fee as part of the sewer bill until proof of the removal of such a connection is provided.
- 6.13 **Building Sewer Joints** – All joints and connections shall be made gas and water tight. Joints for cast iron hub and spigot pipe shall be lead; joints for NO-HUB pipe shall be made with a neoprene gasket and a stainless steel clamp and shield assembly; joints for PVC pipe shall be “O-Ring” type. No mortar joints will be allowed.
- 6.14 **Building Sewer General Requirements** – The connection of the building sewer into the public sewer shall conform to the requirements of SECTION 7 of this ordinance and the procedures set forth in the appropriate ASTM standards. All such connections shall be made gas and water tight. The Town may require pneumatic testing at owner's expense if need is identified by the Town’s LPI. Any deviation from the prescribed procedures and materials must be approved by the Town before installation.
- 6.15 **Building Sewer Inspection Notification** – The applicant for the building sewer permit shall notify the Director of Public Works 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 Director of Public Works. The Director of Public Works shall be available to supervise and inspect the connection, during normal business hours, within forty-eight (48) hours of notification of readiness. Failure to notify the Director of Public Works will result in a fine as indicated in Section 15.

- 6.16 **Building Sewer Excavation Safety** – All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town or the Maine Department of Transportation.
- 6.17 **Manhole Required** – 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.
- 6.18 **Building Sewer Costs and Indemnification** – All costs and expenses incident to the installation, connection and maintenance of the building sewer shall be borne by the owner. These costs include, but are not limited to, materials, excavation, permits, inspection and service fees. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

For the purpose of this section, the building sewer shall terminate at the main sewer line, regardless of the location of the main sewer line or who initially installed all or part of the building sewer. In cases where more than one owner is on the same building sewer line, it shall be the responsibility of the owners to coordinate any and all maintenance and repair.

## SECTION 7 – SEWER EXTENSIONS

- 7.1 **Town Constructed Sewer Extensions** – Public sewer extensions may be constructed by the Town under public contract if, in the opinion of the Board of Selectmen, the number of properties to be served by such extension warrants its cost. Under this arrangement the property owner shall pay for the installation of the building sewer from the public sewer to the residence or place of business in accordance with the requirements of this Ordinance.
- a. When abutting property owners wish to have public sewer facilities extended beyond the existing service area, a majority of the property owners must petition the Board of Selectmen by written petition.
  - b. The signed petition must be presented to the Board of Selectmen at a regular or special meeting of the Board for their consideration.
  - c. Upon receipt of the petition, the Board of Selectmen shall request a recommendation on the proposed project from the Department of Public Works.
  - d. The Department of Public Works will prepare a report concerning the feasibility as well as an estimated cost of the construction which shall be submitted to the Board of Selectmen.
  - e. The Board of Selectmen shall, if they deem the project feasible both from a construction and a financial standpoint, request the Town Manager to submit a recommendation for financing.
  - f. The Board of Selectmen, when in agreement with the proposed financing, shall request the Director of Public Works to prepare a list of the abutters to be benefited, and to submit this list to the Town for mailing of the estimated assessments. The estimated assessments will be

based upon 100% of the estimated project costs to serve the total number of benefited property owners. Benefited shall mean any property abutting the new sewer extension, whether or not requesting service.

- g. The Board of Selectmen shall set the annual simple interest rate to be charged on those assessments which are desired to be paid on a term basis.
- h. The Town shall send notices of the estimated assessments and the interest rate to be charged on the assessments paid over an extended period of time to all abutting property owners to be benefited by the proposed project. Benefited property owners may choose to pay their assessment in a lump sum or over an extended period of time not to exceed five (5) years, or some other period of time that is agreeable to the Board of Selectmen. The assessment plus interest shall be payable in four equal payments per year at the rate previously set by the Board of Selectmen. The Town shall require all benefited property owners who choose to pay their assessment over an extended period of time to execute an agreement which shall be filed at the Hancock County Registry of Deeds and at the office of the Southwest Harbor Town Clerk. This agreement shall bind the signer to pay for his proportional share of the total project cost.
- i. The Board of Selectmen will authorize the construction of the project when 75% of the estimated assessments have been signed and returned by the benefited abutting property owners.
- j. A public hearing will be held by the Board of Selectmen at which time the actual assessment will be considered legally established and any benefited property owner's grievances will be heard.
- k. The Department of Public Works will have final plans and specifications prepared and will determine if the project can be done by Town forces or by contract. (If by contract, the usual bidding procedure will be followed as required by Maine Municipal Law).
- l. Once the project is complete, the Department of Public Works will determine the total project cost., to include design and inspection fees, if appropriate, and notify the Board that the project is complete and usable.
- m. The Town will prepare and mail the actual amount of the assessment to be made to each benefited property owner. The assessment shall be based upon 100% of the actual project cost. The benefited property owner assessment (PA) shall be calculated as follows:  
  
Total project cost divided by number of potential benefited property owners. Non-residential properties shall be assessed a percentage of projected water usage, not to be less than the residential share of total cost, as determined by the Director of Public Works. Subsequent hook up to the sewer line beyond initial abutting benefited property owners will decrease the user share to cost ratio with pro-rated refunds to those benefited abutting property owners who have already paid and subsequent payments to other benefited abutting property owners will be reduced proportionately.
- n. Benefited property owners shall make their applications for sewer connection at the Town Office. Upon application, the benefited property owner shall pay to the Town, the sewer application and service fees in addition to the sewer extension assessment fee. All benefited property owners shall have connected to said sewer within two (2) years after the sewer extension was deemed usable.

- o. The Town will make sewer assessment refunds without interest if additional benefited property owners are connected to the requested sewer extension. The sewer extension assessment refunds will be made to the benefited property owners of record at the time of the refund.
- p. No benefited property owner refunds will be made after a period of ten (10) years from the date the Board of Selectmen deem the sewer extension complete and useable.

7.2 **Private Sewer Extensions Constructed within Private or Public Way** – If the Town does not elect to construct a sewer extension under Public Contract, the Developer (property owner, building contractor, etc.) may construct the necessary extension, if such extension is approved by the Board of Selectmen in accordance with the requirements. Said developer must pay for the entire installation including all expenses incidental thereto. The design of the sewer extension shall be as specified in SECTION 8, GUIDELINES FOR MATERIALS AND CONSTRUCTION OF SEWER MAINS. The installation of the sewer extension shall be subject to periodic inspection by the Department of Public Works or its agent. The decision of Public Works shall be final in matters of quality and methods of construction. The cost of sewer extensions thus made shall be totally absorbed by the developer. Private systems constructed within public ways will remain privately owned until such time as at least one other customer requests connection to the private system and all appropriate easements have been filed and other requirements have been met.

- a. The developer shall prepare a detailed report with substantiated data included concerning the estimated cost of the proposed sewer extension construction and the estimated cost of the installation of a complete non-engineered subsurface wastewater disposal system designed and installed in conformance with the State of Maine Plumbing Code that would serve a typical three (3) bedroom dwelling with a design flow that meets or exceeds the requirements of the Maine Plumbing Code.
- b. The assessor, in conjunction with the Department of Public Works, shall prepare a list of abutters to be benefited by the proposed private sewer extension. In the case of the sewer being extended in a public road for connection to the existing Town mains, persons or properties abutting the new line along said road, and having adequately functioning on-site disposal systems shall not be required to connect to the new line.
- c. Upon receipt of the report from the developer, the Board of Selectmen shall schedule a Public Hearing on the proposed sewer extension. The Town shall send notices of the Public Hearing by registered mail stating the reason, date, time and location for the Hearing.
- d. The Board of Selectmen, when in agreement with the proposed private sewer extension construction, the proposed construction specifications, the proposed construction costs and any special requirements they wish to apply as a part of their approval, will authorize the construction of the project.
- e. The developer shall notify the Town when the private sewer extension project has started and when it is complete. The Director of Public Works shall make final inspection of the construction project and prepare a report to the Board of Selectmen stating the status of the project and whether the sewer extension has been installed and constructed in conformity with the specification.

- f. The developer shall prepare and execute all necessary documents to the Board of Selectmen's satisfaction for the dedication of the private constructed sewer to the Town. This shall include dedication of any easement for the sewer mains within the private way, of a size appropriate for maintenance, testing and repair.
- g. Upon receipt of the executed dedication documents and a satisfactory report from the Department of Public Works regarding its final inspections, the Board of Selectmen shall accept such sewer extension and deem the sewer extension usable.
- h. Benefited property owners requesting connection to the sewer extension shall make application for connection to the sewer at the Town Office. Benefited property owners shall pay upon application the sewer application and service fees and the sewer extension assessment fee. The sewer extension assessment fee will not be charged after ten (10) years from the date the Board accepted the sewer from the developer.
- i. The sewer extension assessment fee shall be calculated as follows described in paragraph 7.1.m.
- j. The Town shall make sewer assessment fee refunds to the developer, as calculated in paragraph 7.1.o. if and when benefited property owners are connected to the sewer extension.
- k. No sewer extension assessment fee refunds will be made after a period of ten (10) years from the date the Board of Selectmen accepted the dedication of said sewer extension from the developer.

7.3 **Privately Constructed Sewer Extension** – If the Town does not elect to construct a sewer extension under public contract, the developer (property owner, building contractor, etc.) may construct the necessary sewer extension, if such extension is approved by the Board of Selectmen in accordance with the requirements of this Ordinance. The cost of sewer extensions thus made, including all building sewers, shall be absorbed by the developer. Each building sewer must be installed and inspected as previously required and the inspection fees shall be paid by the developer. Design of sewers shall be as specified in this Ordinance. The installation of the sewer extension shall be subject to periodic inspection by the Department of Public Works and the expenses for this inspection shall be paid for by the developer. The Director of Public Works' decision shall be final in matters of quality and methods of construction. Before it may be used, the sewer, as constructed, must pass the leakage test required in this Ordinance.

7.4 **Sewer Extension Ownership** – All sewer extensions constructed at the property owner's, builder's or developer's expense, after final approval and letter of acceptance by the Selectmen, shall become the property of the Town and shall thereafter be maintained by the Town. The sewers, after their acceptance by the Town, shall be guaranteed against defects in materials or workmanship for eighteen (18) months. The guarantee shall be in the form of a maintenance guarantee bond in an amount not less than ten percent (10%) of the Engineer's estimate of the cost of the extension.

7.5 **Building Permit Requirement** – No builder or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities within the Town, unless a suitable and approved method of waste disposal is proposed.



## **SECTION 8 – GUIDELINES FOR MATERIALS AND CONSTRUCTION OF SEWER MAINS**

8.1 **Materials and Design of Sewer Extensions** – Sewer design shall be in accordance with the following provisions:

- a. All extensions to the sanitary sewer system shall be properly designed by a Registered Professional Engineer of the State of Maine in accordance with the Recommended Standards for Sewage Works, as adopted by the Great Lakes - Upper Mississippi River Board of Station Sanitary Engineers.
- b. Plans and specifications for sewer extensions shall be submitted to and approval obtained from the Town before construction may proceed.
- c. The design of sewers must anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area.

8.2 **Gravity Sewer Design** shall be in accordance with the following provisions:

- a. Pipe material shall be polyvinyl chloride pipe (PVC), couplings and fittings shall conform to the ASTM designation D3034 with an SDR of 35.
- b. The minimum internal pipe diameter shall be eight (8) inches.
- c. The joints for each kind of pipe shall be push-on joints using O-ring gaskets provided by the pipe manufacturer and installed in accordance with the pipe manufacturer's recommendations.
- d. Six (6) inch wye branches or tees shall be installed for connection to building sewer. A six (6) inch building sewer shall be run from the sewer main to the property line. The end of the building sewer shall be capped for the final testing. The location of the end of the sewer shall be tied to a minimum of three points.
- e. Upon acceptance of the sewer extension by the Town, the building sewers may be extended in accordance with the provisions of this Ordinance and the Code.
- f. Sewers shall be laid in granular fill from the bottom of the excavation to the mid-diameter of the pipe for the full width of the trench and compacted to a minimum density of 90% of the maximum density determined by ASTM Method D1557, (Modified Proctor). The type of granular fill to be used and the thickness of same will be determined in the field based on the sub-grade soil and the groundwater conditions encountered along the pipeline route.
  - (1) Where the bottom of the excavated trench is above the natural groundwater level or the level of groundwater maintained continuously by a dewatering system installed in advance of construction, four (4) to six (6) inches of crushed stone or a minimum of six (6) inches of gravel borrow shall be placed beneath all barrels, bells or couplings of all pipes installed.

- (2) Where the bottom of the trench excavation is below the groundwater level and pumping of water is done from within the excavation, the contractor shall use a bedding system which provides a stable working surface, will limit disturbance of the subgrade and will limit as much as practicable the piping or washing of fine soil grains from the subgrade soils due to the flow of water into the trench. In all cases where groundwater is present as defined herein before, crushed stone shall be installed from the mid-diameter of the pipe to a point four (4) to six (6) inches beneath the bottom of all barrels, bells or couplings of all pipes installed. Where the subgrade soil type is a low or nonplastic silt (ML), silty or clayey sand (SM, SC), fine to medium sand (SP), or silty or clayey gravel (GM, GC) as defined by the soil classification system described in ASTM Standard Method D2487 (Unified System) a two-layer bedding system shall be utilized. The top layer of this of this bedding system shall be crushed stone as described herein before and the lower layer shall be a minimum of six (6) inches thick and be comprised of gravel borrow.
- (3) No more than six (6) inches of crushed stone bedding shall be placed beneath the bottom of any pipe and/or structure. If through an error in excavation by the contractor or due to a need to remove unsuitable material to depths greater than required to install the pipe bedding, the contractor shall backfill this additional excavation with a gravel borrow. Gravel borrow may be placed in a single lift if the total thickness of gravel borrow beneath the pipe does not exceed twelve (12) inches. If greater than twelve (12) inches of gravel bedding or backfill is required below the pipe barrel, second and successive lifts shall be placed in lifts not greater than eight (8) inches loose measure. Gravel shall achieve a minimum density of 90 percent of maximum density determined by ASTM Method D1557, (Modified Proctor). Clean fill material shall be installed from the mid-diameter of the pipe to a point twelve (12) inches over the top of the pipe to a minimum density of 90 percent of the maximum density determined by ASTM Method D155, (Modified Proctor).

8.3 **Manholes** shall be constructed at all changes in slope and alignment or at intervals not exceeding three hundred (300) linear feet. The manholes shall be constructed of precast reinforced concrete conforming to ASTM C478. Horizontal joints between sections of precast concrete manholes shall be sealed with a self-sealing butyl rubber based flexible joint sealant in rope form. Sealant shall be Kent-Seal No. 2, Ram-Nek, or equal.

- a. Manhole steps shall be of cast aluminum or steel reinforced copolymer polypropylene plastic. All steps shall be twelve (12) inches on center with abrasive step surface and safety edge, drop front design one (1) inch diameter and sixteen (16) inch wide.
- b. Pipe connections shall be made with premolded elastomeric sealant joints. Premolded elastomeric sealed joints shall be A-Lok, Res-Seal, Press Wedge II Lock Joints Flexible Manhole Sleeve, Kor-N-Seal Joint Sleeve, or approval equal.
- c. Manhole covers and frames shall be cast iron conforming to the requirement of ASTM Specification A48, Class 30, and shall be of noiseless non-rocking design with pick holes at the circumference of the cover. The word "sewer" shall be cast on each cover along with the words "Town of Southwest Harbor". Each manhole cover and frame shall have a minimum total weight of 450 pounds with a clear opening of 24 inches. Manhole covers and frames

shall be comparable to Ethridge Model M2675 or comparable models as manufactured by LeBaron Foundry Company, or Neenah Foundry Company. Frames and covers shall be adjusted to grade with a minimum of two (2) bricks and a maximum of five (5) bricks.

- d. Tables and inverts shall be constructed of hard smooth brick set in concrete made of Portland Cement. Inverts shall have the exact shape of the sewers which are connected, and any change in size or direction shall be gradual and even.

8.4 **Leakage Testing** - After the completed sewer line, including service connections, has been installed, the sewer must pass the Town's leakage limitations before they will be approved and sewage flow accepted from them by the Town. The primary means of such testing in gravity sewers shall be by low pressure air after installation and capping of house services and backfilling of the gravity sewer trench. Pneumatic plugs used for pipe plugging shall be checked before being used in the actual test installations. One length of pipe shall be laid on the ground and sealed at both ends with these plugs and air shall be introduced to it at 25 psig. The sealed pipe shall then be pressurized to 5 psig. The plugs shall hold against this pressure without bracing and without movement of the plugs out of the pipe. After a manhole to manhole reach of pipe has been backfilled and cleaned and the pneumatic plugs checked by the above procedure, the plugs shall be placed in the line at each manhole and inflated to 25 psig. Low pressure air shall be introduced into this sealed line until the internal air pressure reaches 4 psig greater than the maximum pressure exerted by groundwater that may be above the invert of the pipe at the time of the test. However, the internal air pressure in the sealed line shall not be allowed to exceed 8 psig. At least two minutes shall be allowed for the air pressure to stabilize. After the stabilization period with 3.5 psig. minimum pressure in the sealed line, its air supply shall be disconnected. The portion of line being tested shall be termed acceptable if the time required in minutes for the pressure to decrease from 3.5 to 2.5 psig shall not be less than the time shown for the given diameters in the following table:

<u>Pipe Diameter (inches)</u>	<u>Minutes</u>
4	3.0
6	4.0
8	5.0
10	6.5
12	7.5
15	9.5
18	11.5

8.5 **Deflection Testing** - An inplace deflection test shall be performed when PVC gravity sewers are installed. The gravity sewer shall have a maximum deflection of 5 percent at the time of testing. Upon completion of a sewer section, including the placement and compaction of backfill and the cleaning of the sewer, the deflection shall be measured in 10 percent of the sewer lines. The testing shall be done by the use of a deflectometer, a properly sized "go, no go" mandrel, or a sewer ball, in accordance with the manufacturers recommendations. All sewer lines with a deflection greater than 5 percent shall be repaired by rebedding or replacement of the pipe. At the conclusion of the work, the sewer shall be thoroughly cleaned by flushing with water to remove dirt, stones and other material.

8.6 **Force main design** shall be in accordance with the following provisions: Pipe material shall be either composite PVC/FRP pipe conforming to ASTM D2992 and ASTM D2996-71, or polyvinyl chloride (PVC) pressure pipe, Class 150, conforming to AWWA C900-75. The joints

for each kind of pipe shall be push-on joints O-ring gaskets provided by the pipe manufacturer and installed in accordance with the pipe manufacturer's recommendations.

Concrete thrust blocks shall be placed at all force main bends 11 1/4 degrees and greater. The force main shall be tested by water pressure equal to two times the total dynamic head of the pump to which the force main is attached, unless this produces greater than the working pressure of the pipe. In that case, the pipe shall be tested to the working pressure of the pipe. This pressure shall be held for a period at least fifteen (15) minutes, allowing a maximum pressure drop of 5 psi.

## **SECTION 9– USE OF PUBLIC SEWERS**

### **9.1 Unpolluted Water Prohibited in Public Sanitary Sewer**

- a. No person shall discharge, or cause to be discharged, any unpolluted waters such as storm water, surface water, ground water, roof run off, sump pumps, foundation drains, subsurface drainage, cooling water, or unpolluted industrial process water, to any sanitary sewer.
- b. Where such connections already exist, the Owner must, after notification by the Town, and at the Owner's expense, remove said connections and provide proof of such to the Town. The Board of Selectmen may establish and levy a stormwater disposal fee as part of the sewer bill until proof of the removal of such a connection is provided.

9.2 **Dilution** - no User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Superintendent may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements or in other cases when the imposition of mass limitations is appropriate.

### **9.3 Prohibited Discharge Standards**

- a. **General Prohibitions.** No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.
- b. **Specific Prohibitions.** No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
  - (2) Wastewater having a pH less than 5.0 or more than 9.0, or otherwise causing corrosive structural damage to the POTW or equipment, unless otherwise approved by the Superintendent;
  - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference;

- (4) Any garbage that has not been properly shredded. (See Section 2.2)
- (5) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;
- (6) Wastewater having a temperature greater than 150°F (150 degrees F) 65°C (65 degrees C), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);
- (7) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;
- (8) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the Town's MePDES permit;
- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
- (12) Storm Water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by the Superintendent;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- (14) Medical Wastes, except as specifically authorized by the Superintendent in an individual wastewater discharge permit;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;
- (16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l;
- (18) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0° and 65°C).

- c. Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471.

- d. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in Section 11 of this ordinance in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.

9.4 **State Pretreatment Standards** - Users must comply with State Pretreatment Standards codified at 06-096 CMR Chapter 528 Pretreatment Program.

9.5 **Local Limits**

- a. The Superintendent is authorized to establish Local Limits pursuant to 40 CFR 403.5(c) to protect against Pass Through and Interference. Such limits shall be reviewed and modified periodically as required by the MEPDES permit of the Town or at the Superintendent's discretion.
- b. No person shall discharge wastewater containing concentrations in excess of the Local Limits.
- c. The above limits apply at the point where the wastewater is discharged to the POTW.
- d. All concentrations for metallic substances are for total metal unless indicated otherwise.
- e. The Superintendent may impose mass limitations in addition to the concentration-based limitations above.
- f. The Superintendent may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits to implement Local Limits and the requirements of Section 10.1.

9.6 **Grease interceptors required.**

- a. Grease interceptors shall be provided in any establishment where food is prepared or dispensed: to include, but not be limited to restaurants, cafes, lunch counters, cafeterias, bars and clubs, hotels, bed-and-breakfasts, hospitals, sanitariums, factories, school kitchens, commercial kitchens and nursing homes.
- b. The Wastewater Superintendent may authorize annual waivers in those cases where one of the above commercial establishments is determined not to be a grease generator. Any establishment that generates wastewater, or other waste to enter the public sewer, which contains less than 100 parts per million by weight, of fat, oil or grease shall be considered not to be a grease generator. In reaching his determination the Wastewater Superintendent may require a test. Testing fees, if necessary, shall be paid by the applicant. If inspection of a sewer service indicates grease is entering the system from a property that has previously obtained a waiver, the Superintendent may revoke the waiver and require that a grease interceptor be installed.

- c. 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 chapter, but must comply with State Subsurface Wastewater Disposal Rules.
- d. Oil and sand interceptors required. 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.
- e. Construction and design of interceptors. All grease interceptors shall be of a design conforming to the State of Maine Internal Plumbing Code. Sand interceptors, when in the opinion of the Superintendent they 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, watertight and equipped with easily removable covers which when bolted in place shall be gastight and watertight. The Superintendent shall review and approve all sizing requirements prior to application for the installation permit.
- f. Permit required for installation. A permit for installation of an interceptor shall be obtained from the local plumbing inspector.
- g. Location. Each interceptor and grease trap cleaning record shall be so located as to be readily and easily accessible for cleaning and inspection at all times. Grease trap cleaning records shall be displayed proximal to the location of the grease interceptor. Grease interceptors shall be of the internal type.
- h. Installation and maintenance.
  - (1) All establishments which are required to install grease interceptors must have the same installed no later than one hundred and eighty (180) days from the date of notice to do so by the Plumbing Inspector.
  - (2) Installation and maintenance of any interceptor shall comply with the Plumbing code. Accumulated grease shall be removed as needed, but in no case less than once per year. Owners of properties in which grease interceptors are installed must provide evidence of cleaning by mailing or delivering cleaning records to the Town Hall on a regular basis and also, maintain a record of the dates that such interceptors are cleaned. These records remain the property of the Town of Southwest Harbor. Seasonal businesses are exempt from inspection and cleaning requirements during the times of year when they are closed.
- i. Inspection and violations. In the application for the installation of an interceptor, the owner or tenant of the premises shall grant to the Town permission to conduct unannounced inspections of such interceptor during normal business hours, which inspections shall not unreasonably interfere with normal operations of the business. Should an inspection show a violation of this Section, the owner and/or tenant of the premises will be advised as to the requirements of this section. Should a second inspection reveal a violation continued, a written warning shall be issued describing the requirements of this section. In the event a third violation occurs, the highest dollar value of the following will be charged to the owner, tenant and/or occupant of the premises for each violation: a minimum surcharge of \$200, or a ten-percent surcharge to the premises' sewer bill for the current quarter. If further violations continue, these may result in the prosecution of the owner, tenant and/or occupant of the premises.

## 9.7 **The Town's Right of Revision**

The Town reserves the right to establish, by ordinance or in individual wastewater discharge permits more stringent Standards or Requirements on discharges to the POTW consistent with the purpose of this ordinance.

## **SECTION 10 - PRETREATMENT OF WASTEWATER**

10.1 **Pretreatment Facilities** - Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 9.3 of this ordinance within the time limitations specified by EPA, the State, or the Superintendent, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Superintendent for review, and shall be acceptable to the Superintendent before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Town under the provisions of this ordinance.

### 10.2 **Additional Pretreatment Measures**

- a. Whenever deemed necessary, the Superintendent may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and ensure the User's compliance with the requirements of this ordinance.
- b. The Superintendent may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.

### 10.3 **Accidental Discharge/Slug Discharge Control Plans**

The Superintendent shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The Superintendent may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- a. Description of discharge practices, including nonroutine batch discharges;
- b. Description of stored chemicals, and conditions under which they are stored;
- c. Procedures for immediately notifying the Superintendent of any accidental or Slug Discharge, as required by Section 10.3 of this ordinance; and
- d. Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.



## SECTION 11—INDIVIDUAL WASTEWATER DISCHARGE PERMITS

- 11.1 **Wastewater Analysis** - When requested by the Superintendent, a User must submit information on the nature and characteristics of its wastewater within ten (10) days of the request. The Superintendent is authorized to prepare a form for this purpose and may periodically require Users to update this information.
- 11.2 **Individual Wastewater Discharge Permit Requirement** - Any violation of the terms and conditions of an individual wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 15 and 16 of this ordinance. Obtaining an individual wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.
- 11.3 **Application Signatories and Certifications**
- a. All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 12.10 a.
  - b. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Superintendent prior to or together with any reports to be signed by an Authorized Representative.
- 11.4 **Individual Wastewater Discharge Permit Decisions** - The Superintendent will evaluate the data furnished by the User and may require additional information. Within thirty (30) days of receipt of a complete permit application, the Superintendent will determine whether to issue an individual wastewater discharge permit. The Superintendent may deny any application for an individual wastewater discharge permit
- 11.5 **Individual Wastewater Discharge Permit Duration** - An individual wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Superintendent. Each individual wastewater discharge permit will indicate a specific date upon which it will expire.
- 11.6 **Monitoring Manholes Installed by Industrial Users** – If found necessary by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Town. The manhole shall be installed by the Owner at his expense, and shall be maintained by him so as to be safe and accessible to the Town at all times.

All industries discharging into a public sewer shall perform such monitoring of their discharges as the Town may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Town. Such records shall be made available upon request by the Town to other agencies having jurisdiction over discharges to the receiving waters.

## **SECTION 12 – REPORTING REQUIREMENTS**

12.1 **Ordinance Compliance Requirements** – The Town may require the user of sewer services to provide information needed to determine compliance with these rules and regulations. These requirements may include, but are not limited to:

- a. Average and peak rate of wastewater discharge and volume over a specified time period.
- b. Chemical analysis of wastewaters.
- c. Information on raw materials, processes and products effecting wastewater volume and quality.
- d. Quantity and disposition of specified liquid, sludge, oil, solvent or other materials important to sewer use control.
- e. A pilot plan of the user’s property showing sewer and pretreatment facility locations.
- f. Details of wastewater pretreatment facilities.
- g. Details of systems to prevent and control the losses of materials through spills to the municipal sewer system.

### 12.2 **Periodic Compliance Reports**

- a. Except as specified in Section 2.2, all Industrial Users must, at a frequency determined by the Superintendent submit reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Superintendent or the Pretreatment Standard necessary to determine the compliance status of the User.
- b. All periodic compliance reports must be signed and certified in accordance with Section 12.10 of this ordinance.
- c. All wastewater samples must be representative of the User’s discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- d. If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Superintendent, using the procedures prescribed in Section 12.7 of this ordinance, the results of this monitoring shall be included in the report.

12.3 **Reports of Changed Conditions** - each User must notify the Superintendent of any significant changes to the User’s operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.

- a. The Superintendent may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of an updated wastewater discharge permit application under Section 11 of this ordinance.
- b. The Superintendent may issue an individual wastewater discharge permit or modify an existing wastewater discharge permit under Section 11 of this ordinance in response to changed conditions or anticipated changed conditions.

## 12.4 Reports of Potential Problems

- a. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the Superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- b. Industrial Users are required to notify the Superintendent immediately of any changes at their facility affecting the potential for a Slug Discharge.

## 12.5 Notification of the Discharge of Hazardous Waste

- a. Any User who commences the discharge of hazardous waste shall notify the POTW in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste. If the User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 12.3 of this ordinance. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of Section 2.2 of this ordinance.
- b. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

12.6 **Analytical Requirements** - All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed by EPA approved methods, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the [Superintendent] or other parties approved by EPA.

12.7 **Sample Collection** - Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

- a. The User must collect wastewater samples using EPA approved sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Superintendent. Where time-proportional composite sampling or grab sampling is authorized by the Town, the samples must be representative of the discharge. Using protocols (including appropriate

preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Town, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

12.8 Recordkeeping - Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 9.5.f. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the Town, or where the User has been specifically notified of a longer retention period by the Superintendent.

12.9 **Notice of Violation/Repeat Sampling and Reporting** - If sampling performed by a User indicates a violation, the User must notify the Superintendent within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Superintendent within thirty (30) days after becoming aware of the violation. Re-sampling by the Industrial User is not required if the Town performs sampling at the User's facility at least once a month, or if the Town performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Town receives the results of this sampling, or if the Town has performed the sampling and analysis in lieu of the Industrial User.

#### 12.10 **Certification Statements**

- a. Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 11.3; Users submitting baseline monitoring reports under Section 12 ; Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 10; Users submitting periodic compliance reports required by Section 12.2, and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 12. The following certification statement must be signed by an Authorized Representative as defined in Section 2.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

## SECTION 13 – PROTECTION FROM DAMAGE

- 13.1 **Damage to Public Sewer Prohibited** – No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage works. Any person violating this provision shall be subject to immediate arrest under charge of criminal mischief as set forth in Maine Revised Statutes Annotated, Title 17-A, Chapter 13, Section 806.
- 13.2 **Evidence of Insurance by Contractor** – A contractor must present a certificate of insurance showing, at a minimum, liability coverage of \$100,000/\$300,000 for bodily injury and a \$25,000 limit for property damage including collapse and underground coverage before a permit will be issued for construction of building sewers or sewer extensions. Sewer extensions may require higher coverage if so recommended by the Superintendent.

## SECTION 14 – POWERS AND AUTHORITY OF INSPECTORS

- 14.1 **Right of Entry** - The Superintendent or Local Plumbing Inspector shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this ordinance and any individual wastewater discharge permit or order issued hereunder. Users shall allow the Superintendent or Local Plumbing Inspector ready access to all parts of the premises for the purpose of inspection, sampling, records examination and copying, and the performance of any additional duties.
- a. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing such access shall be born by the User.
  - b. Unreasonable delays in allowing the Superintendent access to the User’s premises shall be a violation of this ordinance.
  - c. Search Warrants - If the Superintendent or Local Plumbing Inspector has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Superintendent or Local Plumbing Inspector may seek issuance of a search warrant from the appropriate authorities.

## SECTION 15 – PENALTIES

- 15.1 **Notice of Violation** – Any person found to be violating any provision of this ordinance shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time period for satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations and notify the Town of corrective measures taken and when completed.

- 15.2 **Failure to Comply** – 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, upon conviction, be subject to a fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) 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. In addition to the penalties provided herein, the Town may recover reasonable attorneys fees, court costs and other expenses of litigation by appropriate suit at law against the person found to have violated these rules and regulations.
- 15.3 **Alternative Action(s) by the Town** - As an alternative, upon identifying any violation of this ordinance, the proper authorities of the Town, 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, and other violations mentioned herein, 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.
- 15.4 **Compliance Orders** - When the Superintendent or Local Plumbing Inspector finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Superintendent or Local Plumbing Inspector may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including, but not limited to, additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.
- a. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.
- 15.5 **Remedies Nonexclusive** - The remedies provided for in this ordinance are not exclusive. The Superintendent may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the Town's enforcement response plan. However, the Superintendent may take other action against any User when the circumstances warrant. Further, the Superintendent is empowered to take more than one enforcement action against any noncompliant User.
- 15.6 **Liability to the Town** – Any person violating any provisions of this ordinance shall become liable to the Town for any expense, loss, or damage occasioned by the Town by reason of such violation.

## SECTION 16 – SEWER SERVICE CHARGE

### 16.1 Funding Sources

- a. Capital and Infrastructure Expenses - Debt service incurred on or after May 4, 2010 for Capital Expenditures and Infrastructure Expenditures shall be financed using the Town's general fund. All debt service existing prior to May 4, 2010, as well as any debt service incurred on or after May 4, 2010 for purposes other than Capital Expenditures and Infrastructure Expenditures shall be financed through a sewer service charge assigned to all owners of all properties located within the public sewer service area having or required to have sanitary facilities, whether actually connected to the public sewer system or not. Expenses incurred for Capital Expenditures and Infrastructure Expenditures that are not financed will be paid for in the same manner as Operational Expenses, as set forth in Section 12.1(b) below.
- b. Operational Expenses: The source of revenues needed for Operational Expenditures shall be a sewer service charge assigned to owners of all properties located within the public sewer works service area having or required to have sanitary facilities, whether actually connected to the public sewer system or not.

For purposes of this section, the following definitions shall apply:

- (1) ***Capital Expenditures***: An outlay of funds for the acquisition or improvement of a fixed asset with an expected useful life of at least twenty (20) years which extends the life or increases the productivity of the asset, and for which the expense is *generally* capitalized and depreciated over the estimated useful life of the asset.
- (2) ***Infrastructure Expenditures***: An outlay of funds for the basic facilities, equipment, installations and appurtenances (e.g. distribution lines) needed for the functioning of the Publicly Owned Treatment Works and having an expected useful life of at least twenty (20) years.
- (3) ***Operational Expenditures***: An outlay of funds required to allow the Sewer Department to meet expenses incurred in the ordinary course of operating the Sewer Department and the Publicly Owned Treatment Works.

16.2 **Establishment of Rates** – Sewer service charge rates including readiness to serve charges shall be determined by the Town Selectmen after notice and hearing. This charge will be computed and billed on a quarterly basis throughout the calendar year.

16.3 **Billing Categories and Justification** – The sanitary sewer service area and the nature of buildings required to have sanitary facilities shall be as defined in Section 3.1 hereof.

- a. In the case of a building not connected to the public system, such charge shall be deemed a “ready to serve” charge levied to aid in defraying expense incurred in making service available to the property.
- b. In the case of a connected building not in active use or occupancy and having no discharge during a given billing period, the portion related to capital expenditures and retirement of debt service may in the opinion of the Governing Body be regarded as a minimum charge the user will be billed the minimum charge at a rate established by the Board of Selectmen.

- c. In the case of a connected building actively discharging to the public system for all or part of any given billing period, the charge shall be increased to include the cost of operation and maintenance of the public sewage works.
  - d. Buildings which are served only by public sewer but not public water will be billed at a rate set by the Board of Selectmen. Owners of these buildings may choose to have their well metered at their own expense, and be charged for actual usage.
- 16.4 **Changes in Rates** – The Town Selectmen reserve the right, from time to time, to change the rates of sewer service charges originally or previously assigned to any property owner.
- 16.5 **Late Charge** – There shall be a late charge equal to the maximum rate allowed by state law assessed to all delinquent accounts effective thirty (30) days from the date of billing. The rate shall be established annually by the Town.
- 16.6 **Disputed Bills.** Any dispute over a bill must be submitted in writing within ninety (90) days from the date of receipt of the bill.
- 16.7 **Disconnection Process for Overdue Combined Water & Sewer Balances.** The Utility may disconnect water service to Customers receiving sewer service for non-payment of an undisputed balance, if the total overdue balance is greater than \$100.00.

a. **DEFINITIONS**

(1) Total Account Balance means the total water and sewer amount owed by a Customer than has been properly billed. It does not include disputed amounts, non-payment of fees, or charges for estimated sewer service usage.

(2) Total Amount Overdue means the total water and sewer amount billed to a Customer that has not been paid by the due date of the bill or by a date otherwise agreed upon by the Utility and the Customer. Disputed amounts will not be included in the Total Amount Overdue.

- b. **DISCONNECTION AND RECONNECTION.** A 14 day disconnection notice shall be issued when a Customer does not pay or make a payment arrangement on an undisputed balance, and the Total Amount Overdue is greater than \$100.00.
- c. **PAYMENT ASSOCIATION.** In the event that a payment is received by the Utility that does not clearly indicate whether the payment is for water or sewer, the Utility shall attempt to ascertain the intentions of the Customer. When such intentions cannot be determined, money received shall be applied first to outstanding water bills, and then to outstanding sewer bills.
- d. **PAYMENT ARRANGEMENT.** The Utility shall continue to serve a Customer who cannot pay the Total Account balance provided satisfactory payment arrangements are made in accordance with the Commission’s Rules and Regulations and with these Terms and Conditions.



16.8 **Special Industrial Rates** – A special sewer service charge shall be assigned to any firm or organization which discharges industrial wastes to the POTW.

The Town may adopt charges and fees which may include:

- a. Fees for reimbursement of costs for setting up and operating a pretreatment program;
- b. Fees for monitoring, inspections and surveillance procedures;
- c. Fees for reviewing accidental discharge procedures and construction;
- d. Fees for permit applications;
- e. Fees for filing appeals;
- f. Fees for consistent removal (by the Town) of pollutants otherwise subject to Federal Pretreatment Standards;
- g. Other fees as the Town may deem necessary to carry out the requirements contained herein.

These fees relate solely to the matters covered by this Ordinance and are separate from all other fees chargeable by the Town.

## **SECTION 17 – LICENSE**

17.1 **License Fees** – Each and every plumber, contractor or excavator, or other person, firm or corporation other than the property owner himself, will be required to secure a license issued by the Town Clerk, before he will be permitted to do any work in the Town insofar as this Ordinance is concerned. The initial fee and annual renewable fee shall be as indicated on the license application form provided in the Appendix.

17.2 **Revoking of License** – If, in the opinion of the Governing Body, the work performed by the Contractor within the Town violates the provisions of this ordinance or any other ordinance of the Town, or if the Contractor’s work is, in the opinion of the Governing Body, substandard, then in that event, the Governing Body may revoke the license for the Contractor to do work in the Town.

## **SECTION 18 – PAYMENT OF OUTSTANDING FEES AND PENALTIES**

The Superintendent may decline to issue or reissue an individual wastewater discharge permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous individual wastewater discharge permit, or order issued hereunder.

## **SECTION 19– VALIDITY OF ORDINANCE**

19.1 **Prior Ordinances Repealed** – All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

19.2\_ **Invalid Sections** – The invalidity of any section, clause, sentence or provision of this ordinance shall not effect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

## **SECTION 20 – ORDINANCE IN FORCE**

This ordinance shall be in full force and effect from and after its passage, approval and recording.

# **Shellfish Ordinance** **Town Of Southwest Harbor**

## **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 Town of Southwest Harbor which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- 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 clams taken daily by a harvester

## **3. SHELLFISH CONSERVATION COMMITTEE**

The Shellfish Conservation Program for the Town of Southwest Harbor will be administered by the Shellfish Conservation Committee consisting of up to seven (7) members to be appointed by the selectmen of the town for terms of from one (1) to three (3) years. Committee decisions will require an affirmative vote of four (4) members. The committee's responsibilities include:

- A. With approval of the Board of Selectmen, establishing annually in conjunction with the Department of Marine Resources (DMR) the number of each type of shellfish license to be issued and the limits on daily take for commercial licensees.
- B. Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
- C. Keeping this ordinance under review and making recommendations for its amendments.
- D. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas.
- E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Department of Marine Resources Area Biologist.
- F. Submitting an annual report to the Town of Southwest Harbor and the Department of Marine Resources covering above topics and all other committee activities.

## **4. DEFINITIONS**

- A. **Resident** - The term "resident" refers to a person who has been domiciled in this municipality for at least three months prior to the time his claim of such residence is made.
- 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*).

**D. Municipality** is the Town of Southwest Harbor, Maine.

**E. DMR** is the State of Maine Department of Marine Resources.

**F. Committee** is the Town of Southwest Harbor Shellfish Conservation Committee.

## **5. LICENSING**

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. The Town Clerk (or a designee) or an on-duty shellfish warden shall issue all licenses.

### **A. Designation, Scope and Qualifications**

**1. Resident Recreational License** The license is available to any resident or real estate taxpayer of this municipality who does not hold current a commercial shellfish digger license issued by the State of Maine DMR and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

**2. Nonresident Recreational License** The license is available to any person not a resident or real estate taxpayer of this municipality who does not hold a current commercial shellfish digger license issued by the State of Maine DMR and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

**3. Resident Commercial License** The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take an amount of shellfish in any one day as set annually by the Board of Selectmen and publicly noticed by the Shellfish Conservation Committee prior to issuance of licenses each year. Except as otherwise limited by State of Maine law or Department of Marine Resource regulation or order, the holder may sell shellfish harvested under the terms of this license.

**4. Nonresident Commercial License** The license is available to any person not a resident or real estate taxpayer of this municipality and entitles the holder to dig and take an amount of shellfish in any one day as set annually by the Board of Selectmen and publicly noticed by the Shellfish Conservation Committee prior to issuance of licenses each year. Except as otherwise limited by State of Maine law or Department of Marine Resource regulation or order, the holder may sell shellfish harvested under the terms of this license.

**5. License must be signed** The license must be signed by the holder to make it valid.

**B. Application Procedure** Any person may apply to the Town Clerk (or a designee) or to an on-duty shellfish warden for the license required by this ordinance on forms provided by the municipality.

**1. Contents of the Application** The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, a statement as to whether the applicant holds a commercial shellfish digger license issued by the State of Maine DMR, and the basis for the claim of status as a town resident or real estate taxpayer and must be signed by the applicant attesting to the accuracy of this information.

**2. Misrepresentation** Any person who gives false information on a license application will cause said license to become invalid and void.

**C. Fees** The fees for the license must accompany in full the application for the respective license. The fee for a Resident Recreational License is \$20.00 and the fee for a Nonresident Recreational License is \$40.00, except that there will be no fee for a recreational license for a person 15 years of age and younger whether a resident or a nonresident. The fee for a resident commercial license is \$200, and for a nonresident license it is \$400. Fees received for shellfish licensing shall be received by the Town Treasurer and shall be used by the town for shellfish management, conservation, and enforcement.

**D. Limitation of Diggers** Clam resources vary in size and distribution from year to year and over the limited soft shell clam producing areas of the town. It is essential that the town carefully husband its resources. Following the annual review of the town's clam resource, its size, distribution, abundance, and the reports as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR Area Biologist will determine whether limiting the number of recreational or commercial shellfish licenses or allowable daily take is an appropriate shellfish management option for the following year. Results of this determination shall be presented to the Board of Selectmen for its approval prior to November 1<sup>st</sup> of each year. In the event that the Board of Selectmen finds that the number of any type of licenses must be limited, available licenses will be issued by means of a drawing from all applications for each type received during a ten (10) day application period ending on the day prior to the effective date of the license. Fees submitted with applications not selected will be mailed within three (3) business days to the applicant at the address shown on the unsuccessful application.

1. Prior to November 10<sup>th</sup> of each year the committee shall report the findings of the Board of Selectmen and document recommendations for the allocation of recreational and commercial licenses and daily limits on commercial take to be made available for the following license year to the Commissioner of Marine Resources for concurrence.

2. After receiving approval of proposed license allocations from the

Commissioner of Marine Resources and prior to December 15<sup>th</sup>, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the allocation of shellfish licenses to be issued.

3. Notice of licenses to be issued, daily commercial take, and procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the Town Board of Selectmen 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 until the period concludes.

4. No digging will be allowed from ½ hour after sunset to ½ hour before sunrise.

5. No licenses of either type will be issued unless the committee recommends and the Board of Selectmen finds that the shellfish resource will support the expected harvest and makes a license allocation that is approved by the DMR to issue a specified number of either or both types of licenses for the following license year.

**E. License Expiration Date** Each license issued under authority of this ordinance expires at midnight the 31st day of December following the date of issuance.

**F. Suspension** The license of any shellfish licensee having two convictions for a violation of this ordinance shall be automatically suspended for a period of thirty (30) days.

**G. Suspension continued** The license of any shellfish licensee having three convictions in a twelve-month period for a violation of this ordinance shall be automatically suspended for a period of one year.

1. A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

2. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.

3. Any licensee whose shellfish license has been automatically suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for a hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written request for appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

**H. Fines** All monies received as fines for violation of this ordinance will be received by the Town Treasurer and will be used by the town for shellfish management, conservation, and enforcement.

## **6. OPENING AND CLOSING FLATS**

The Town Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the DMR 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 Town Board of Selectmen may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Town Board of Selectmen made after the hearing shall be based on findings of fact.

Any area of the Town of Southwest Harbor that is closed to shellfish harvest by state regulation on the effective date of this ordinance that is subsequently opened by the state shall remain closed by the town until reopened by decision of the Town Board of Selectmen after a public hearing.

## **7. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS**

It is unlawful for any person to possess soft shell clams within the Town of Southwest Harbor, County of Hancock which are less than two (2) inches in the longest dimension except as provided by subsection B of this section.

### **A. Definitions**

**1. 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.

**2. 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.

**B. Tolerance** Any person may possess soft-shell clams that are less than two (2) inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.

**C. Penalty** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

## **8. PENALTY**

A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. § 6671 (10).

## **9. EFFECTIVE DATE**

This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption by the Town of Southwest Harbor.

## **10. PERIOD OF THE ORDINANCE**

This ordinance shall remain in effect until amended or repealed by the town.

## **11. SEPARABILITY**

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 portion of this ordinance.

## **12. REPEAL**

Any ordinance regulating the harvest or conservation of shellfish in the town and any provision of any other town ordinance which is inconsistent with this ordinance is hereby repealed.

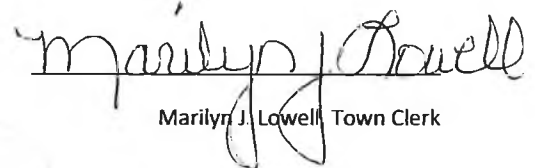


**TOWN OF SOUTHWEST HARBOR**

**TOWN OF SOUTHWEST HARBOR  
SINGLE USE CARRYOUT BAG ORDINANCE**

**Approved 11/13/2018**

**Attest a true copy**

  
Marilyn J. Lowell, Town Clerk



# **SINGLE USE CARRYOUT BAG ORDINANCE**

## **SECTION 1. PURPOSE:**

It is in the best interests of the citizens of and visitors to the Town of Southwest Harbor to protect the environment and natural resources of the Town and the State of Maine and the bodies of water within and adjacent to the Town by: prohibiting the use and distribution of plastic single use carryout bags, discouraging the distribution of disposable paper single use carryout shopping bags, and encouraging the use of reusable shopping bags.

Therefore, the purpose of this Ordinance is to limit the use of single use carryout bags to reduce litter and to reduce the environmental impact caused by the use of single use plastic bags.

## **SECTION 2. AUTHORITY:**

This Ordinance is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VIII, Part 2, Section 1, the provisions of Title 30-A MRS Chapter 141, and the general power of municipalities to enact police power ordinances.

## **SECTION 3. DEFINITIONS:**

**CUSTOMER:** An individual who purchases or accepts food, beverage or merchandise for use or consumption.

**PRODUCT AND PRODUCE BAGS:** Bags without handles used exclusively to carry produce, meats, seafood and bulk items, for the purpose of containing those items or preventing direct contact between those items and other items. These bags are used to carry items to the point of sale inside a Store or to prevent such items from coming into direct contact with other purchased items.

**REUSABLE BAG:** A bag specifically designed and manufactured for the repeated use of carrying food, beverage or merchandise, whether made of cloth, fiber or plastic; is machine washable or made from a material that can be cleaned and disinfected regularly; has the capability of carrying 18 pounds or more; and, if plastic, is at least 4.0 mil thick.

**SINGLE-USE CARRYOUT BAG:** A bag other than a Reusable Bag, as defined above, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the Store. The term Single Use Carry-Out Bag includes compostable and biodegradable bags, including paper bags, but does not include Reusable Bags, Produce Bags, Product Bags required for special handling, or bags provided by pharmacists to contain prescription drugs.

**STORE:** Any commercial enterprise engaged in the sale of food and merchandise, including – but not limited to – grocery and convenient stores, markets, pharmacies, restaurants, take out food, temporary and seasonal businesses, and other merchant retailers. Nonprofit and religious organizations are not considered retailers.

#### **SECTION 4. RESTRICTION ON SINGLE-USE CARRYOUT BAGS**

Except as provided below, no Store as defined above shall provide or sell a Single-Use Carryout Bag to a customer at a checkout stand, cash register, point-of-sale or other point of departure for the purpose of transporting any goods or merchandise out of the establishment.

#### **SECTION 5. PERMITTED BAGS**

A. A Store may, at its discretion, make a Reusable Bag or a paper bag available to the customer either for free or for a fee at the checkout stand, cash register, point of sale or other point of departure for the purposes of transporting food or merchandise out of the establishment. Businesses shall keep any proceeds from the sale of Reusable Bags and paper bags at point of sale.

B. Customers are encouraged to bring Reusable Bags to Stores, which may choose to provide a rebate for such.

C. Customers may use bags of any type that they bring into the Store for their own use.

#### **SECTION 6. EXEMPTIONS**

A Store shall be exempt from the provisions of this Ordinance in a situation deemed to be an emergency by the Town Select Board.

#### **SECTION 7. VIOLATIONS AND ENFORCEMENT**

A. The Town Manager or his/her designee(s) shall have the primary responsibility of the enforcement of this Ordinance. If the Town Manager or his/her designee(s) determines that a violation of the Ordinance has occurred, a written warning notice shall be issued to the Store. If an additional violation occurs after a written warning has been issued, the Town Manager or his/her designee shall issue a written Notice of Violation (NOV) and shall impose a penalty as set forth below.

B. Violations of this Ordinance shall be punishable by fines as follows:

1. A fine not exceeding \$100 for the first written NOV violation in a one-year period.
2. A fine not exceeding \$200 for the second and each subsequent written NOV in a one-year period. Each day that a violation occurs shall be considered a subsequent violation.
3. Fines are payable within 15 days of receipt of written notice of violation.

#### **SECTION 8. APPEALS**

Any decision, action, or inaction pertaining to this Ordinance may be appealed to the Maine Superior Court (Hancock County) within 30 days of the decision, action or inaction.

#### **SECTION 9. SEVERABILITY**

In the event any portion of this Ordinance shall be found to be invalid by a court of competent jurisdiction, the remaining portions of the Ordinance shall remain in effect.

#### **SECTION 10. EFFECTIVE DATE**

The provisions of this ordinance shall become effective on April 22, 2019.

**SPECIAL AMUSEMENT PERMIT ORDINANCE OF  
THE TOWN OF SOUTHWEST HARBOR**

**I. Title, Purpose and Definitions**

**A. Title**

This Ordinance shall be known and may be cited as the "Special Amusement Permit Ordinance of the Town of Southwest Harbor."

**B. Purpose**

The purpose of this Ordinance is to control, as required by Title 28-A, Section 1054, MRSA, the issuance of Special Permits for music, dancing or entertainment in facilities licensed by the State of Maine, to sell liquor or malt liquor or wine in the Town of Southwest Harbor.

**C. Definitions**

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 professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.
2. **Licensee.** For purposes of this Ordinance, the term "Licensee" shall include the holder of a license issued pursuant to the provisions of Title 28-A, 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.

**II. General Permit**

**A. Permit Required.**

1. **No Licensee for the sale of liquor or malt liquor or wine to be consumed on his licensed premises, situated in the Town of Southwest Harbor, 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 Board of Selectmen of the Town of Southwest Harbor, a Special Amusement Permit signed by At least a majority of the members of said Board.

2. Applications for all Special Amusement Permits shall be made in writing to the said Board of Selectmen of the Town of Southwest Harbor and shall include the following:
  - 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 be used;
  - all places of residence of the applicant during the past 5 years;
  - whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, a description of those circumstances specifically’;
  - whether the applicant, including all partners or corporate officers, has ever been convicted of a felony, and if so, a description of those specific circumstances; and
  - any additional information as may be needed by the Board of Selectmen of the Town of Southwest Harbor, in the issuing of the permit including but not limited to a copy of the applicant’s current liquor license.
3. 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 Town of Southwest Harbor.
4. The fee for a Special Amusement Permit shall be fifty dollars (\$50) to cover administrative costs.
5. Within 30 days of the date the request for a Special Amusement Permit is received, the Board of Selectmen of the Town of Southwest Harbor shall, prior to granting a permit and after reasonable notice to the Town and the applicant, hold a public hearing. The testimony of the applicant and that of any interested members of the public shall be taken. Reasonable notice shall mean notification in a newspaper of general circulation at least 7 days prior to the hearing.

6. The Board of Selectmen 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 Town ordinances, or rules and regulations, articles, or bylaws.
7. A permit shall be valid only for the license year of the applicant's existing liquor license.

**B. Classes of Permits. Special Amusement Permits granted by the Board of Selectmen 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 Licensee's 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.

- C. 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.
- D. 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. Said re-

Application 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 Fifty Dollars (\$50.00).

E. Inspections

1. The Board of Selectmen shall require an initial inspection of the premises and Licensee for overall ability to comply with the provisions of this Ordinance and for the purpose of imposing conditions on any permit issued.
2. 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 provisions 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 Town of Southwest Harbor authorized to make the inspection at any reasonable time that admission is requested.
3. In addition to any other penalty which may be provided, the Board of Selectmen may revoke the Special Amusement Permit of any Licensee in the Town who refuses to permit any such officer, official or employee to make an inspection or take sufficient samples for analyses, 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.

F. Regulation of Noise

1. An applicant for a Special Amusement Permit hereunder shall, as part of his application, demonstrate his ability to prevent the emanation of excessive noise from the premises sought to be licensed brought about by music, dancing or entertainment, except for radio or other mechanical device excluded under Title 28-A, 1054, MRSA, or amendments thereto.

2. Sources of noise contemplated by this section shall include musical instruments, sound modification or amplification devices used in connection with musical instruments and or other similar devices which produce, reproduce or amplify sound created by musical instruments. Sources of noise shall further include any noise or sound produced Directly or indirectly by applicant's music, dancing or entertainment Except for those mechanical devices specifically excluded under Title 28-A.
3. Sources of noise shall be required to be muffled so as not to be objectionable due to intermittence, beat, frequency, shrillness or intensity or volume.
4. For the purpose of this Ordinance the licensee or his authorized representative, shall not permit the use of loud and unreasonable noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health or safety of individuals, or which results in disturbing the peace and tranquility of the neighborhood.
5. The maximum permissible sound pressure level of any continuous, regular, frequent, intermittent or periodic source of noise produced by any activity regulated by this Ordinance shall not exceed the following Sound Pressure Level Limits during the same time period indicated:

(Sound pressure levels measured in dB (A)'s &/or dB ( C)'s)

7:00 a.m. to 8:00 p.m.	55 dB (A) or 67 dB ( C)
8:00 p.m. to 7:00 a.m.	50 dB (A) or 62 dB ( C)

Sound pressure levels shall be measured at the lot line or any distance beyond the lot line of the source premises from which the noise being measured is emanating, and at a height of at least four feet (4') above the surface of the ground.

6. For the purpose of determining noise levels as set forth in this Ordinance the following procedures shall be used:
  - a. all personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation;
  - b. instruments used to determine sound level measurements shall conform to the Standards of A.S.I. Type I or Type II meters.

#### **G. Permit Procedures**

- 1. Any Licensee requesting a Special Amusement Permit from the Board of Selectmen shall be notified in writing of its decision no later than Fifteen (15) days from the date his application was heard.**
- 2. In the event that a Licensee is denied a permit, the Licensee shall be provided with the reasons for the denial in writing.**
- 3. The Licensee may not reapply for a permit within thirty (30) days after denial of an application, except with the consent of the Board of Selectmen. The reasons for denial must be corrected before reapplication.**

#### **H. Suspension or Revocation of a Permit**

- 1. The Board of Selectmen 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 Town ordinances, articles, bylaws or rules and regulations.**
- 2. Upon complaint (s) of any person(s) that there are grounds to revoke said Permit, and said complaint(s) having been found by the Board of Selectmen to be valid, after hearing as hereinbefore provided, the Board of Selectmen may warn the licensee that unless the cause(s) of said complaints are removed forthwith, that said Permit will be revoked or suspended after a subsequent hearing concerning same.**

#### **I. Rules and Regulations**

- 1. The Board of Selectmen are hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension and revocation of Special Amusement Permits and placing other limitations on these activities required to protect the public health, safety and welfare. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted. Such rules and regulations shall be additional to and consistent with all sections of this Ordinance.**



2. Rules and regulations available to the Selectmen:
  - a. To require Licensee to have doors and windows closed at a particular time;
  - b. To require police officer attendance if necessary;
  - c. To require the Local Fire Inspector to inspect the premises prior to the issuance of a license.

J. Appeal Procedures

1. Any Licensee who has requested a Permit and has been denied, or whose Permit has been revoked or suspended, may, within thirty (30) days of the denial, suspension or revocation, appeal the decision in Title 30-A, Section 2691, MRSA, as amended.
2. 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, or welfare; or that the denial, revocation or suspension was arbitrary or capricious or was not based by a preponderance of the evidence, on a violation of any Ordinance, article, bylaw, or rule or regulation of the Town.

III. Admission:

- A. Licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor Licenses who have been issued a Special Amusement Permit may charge admission in the designated areas approved by the Town.

IV. Penalty, Separability

- A. Penalty.
  1. Whoever violates any of the provisions of the Ordinance shall be deemed guilty of a criminal offense and upon conviction thereof, shall be penalized by a fine of not more than \$500 for the first offense, and \$1,000 for subsequent offenses.

2. 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.

**B. Separability**

The invalidity of any provision of this Ordinance shall not invalidate any other part.

**ORDINANCE FOR STREET NUMBERING  
AND IDENTIFICATION  
FOR THE TOWN OF SOUTHWEST HARBOR**

Approved: May 8, 1990

**STREET NAMES**

The Road Commissioner shall prepare a map, which map or any revision thereof after approval by the Board of Selectmen is hereby incorporated and made a part hereof. Any action enacted by the Board of Selectmen naming any street, public or private, shall amend the map.

**STREET- NAME SIGNS**

The Road Commissioner shall cause to be erected and maintained, at all street intersections within the Town, substantial signs on which shall be marked plainly the names of streets. Street-name signs shall consist of white letters on a green reflective surface. Street-name signs designating private roads shall be displayed over a sign of equal dimensions bearing the legend "Private Road" in white letters on a blue reflective surface.

**STREET NUMBERS**

1. **Map** The Town Assessor shall prepare a street numbering map, which any revision thereof shall be approved by the Board of Selectmen.
2. **Display of Number** All premises shall bear a distinctive street number in accordance with and as designated upon the street-numbering map on file in the office of the Assessor. No person shall fail to place the correct number upon the front of occupied premises, the number facing the street and adjacent to the principal entrance and in such a position as to be plainly visible from the street. Numbers hereafter placed shall not be less than 3 inches in height and shall contrast in color of the building or background in which they are attached.
3. **Use of Incorrect Number** No person shall affix or allow to be affixed, or allow to remain upon any building which he owns or occupies, a different number from the one designated on the *Street-Numbering Map*.
4. **Penalty** Any person who, after being notified by the Police Chief, shall fail to comply with any of the provisions of this Section within the time limit of not less than thirty (30) days specified in such notice, shall pay a fine of not less than two dollars (\$2) nor more than five dollars (\$5), to be recovered on complaint by the Police Chief for the use of the City before the District Court.

**SUBDIVISION ORDINANCE**  
**OF THE TOWN OF SOUTHWEST HARBOR**

**Approved:** May 8, 1990  
**Amended:** through May 4, 2010

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## SECTION I. AUTHORITY, ADMINISTRATION AND ADMINISTRATIVE PROCEDURES

### A. Authority

1. This Ordinance shall be known and may be cited as “**Subdivision Ordinance of the Town of Southwest Harbor.**”
2. The standards in this Ordinance have been prepared in accordance with the provisions of Title 30 – A MRSA, Sections 4401-4407.

### B. Administration

1. The Planning Board of the Town of Southwest Harbor, hereinafter called the Board, shall administer this Ordinance. **No building or plumbing permit** shall be issued by the Town Officers or Code Enforcement Officer for any use or development within the scope of this Ordinance until an application required by this Ordinance has been reviewed and approved by the Board and any conditions attached to the approval fulfilled.
2. The provisions of this Ordinance have been prepared in accordance with Title 30-A MRSA Section 4401-4407 and shall pertain to all land and buildings within the boundaries of the Town of Southwest Harbor proposed for subdivision.
  - a. 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.
  - b. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise.
  - c. The term “**subdivision**” also includes:
    - i) the division of a new structure or structures on a tract or parcel of land, each into 3 or more dwelling units within a 5-year period.
    - ii) the construction or placement of 3 or more dwelling units on a single tract or parcel of land; and
    - iii) the division of an existing structure or structures previously used for commercial or industrial use, each into 3 or more dwelling units within a 5-year period.
  - d. In determining whether a tract or a 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 3<sup>rd</sup> lot. The first and second dividings are deemed to occur simultaneously and to create three lots

when, as a result of the splitting off of a legal interest in a portion of the tract or parcel, there are left remaining two non-contiguous portions of the tract or parcel, whether or not any legal interest in those non-contiguous portions is split off. However, no subdivision is created when:

- i) both such divisions are accomplished by a sub-divider who has retained one of the lots for the sub-divider's own use as a single family residence or for open space. As defined in Title 36, SECTION 1102, for a period of at least 5 years before The 2<sup>nd</sup> dividing occurs; or
  - ii) the division of the tract or parcel is otherwise exempt under this subchapter.
- e. 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 Town reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
  - f. A lot of 40 or more acres shall not be counted as a lot, except when the lot or parcel from which it was divided is located entirely or partially within any shoreland areas as defined in Title 38, Section 435 (Mandatory Shoreland Zoning effective January 1, 1989), or the Town's Land Use Ordinance.
  - g. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a give to a municipality or by the transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of this definition unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this section. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the real estate by blood, marriage or adoption, then that exempt division creates a lot or lots for the purposes of this subsection.
  - h. The division of a tract or parcel of land into 3 or more lots and upon each of which lot is permanent dwelling structures (either primary or seasonal) do exist is not a subdivision if these permanent dwelling structures have legally existed since before September 23, 1971.
  - i. 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.
  - j. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the Town reviewing authority determines



that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

**C. Administrative Procedure**

1. The Town shall conduct a multi-stage review procedure of one application:
  - a. workshop
  - b. preliminary plan with a completed application; and
  - c. final plan
2. Applications for approval shall be submitted in writing to the Board, on forms provided by it. For projects that are subject to the Maine Site Location of Development Law, the Board will accept the application filed by the applicant for the State Site Location permit, in lieu of the form provided by the Board. The Board may require the submissions of whatever additional information is necessary to determine compliance with the provisions of this Ordinance.
3. Applications for approval under this ordinance must include evidence that all appropriate local, State, and Federal Agencies have been requested to determine if additional permits must be sought from them. Final approval will be given conditionally upon receipt of these permits if they are required.
4. Applicants shall request to be placed on the Board's agenda at least two weeks in advance of a regularly scheduled meeting by contacting the Town. 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.
5. On all matters concerning subdivision review, the Board shall maintain a permanent record of all its meetings, proceedings and correspondence.
6. Joint meetings between Town Planning Boards are required if any portion of a subdivision crosses Town boundaries.
7. Any costs incurred by the Town in its effort to interpret information submitted for the approval of a subdivision shall be borne by the applicant.

**D. Amendments to the Ordinance**

1. This Ordinance may be amended by the legislative body of the Town of Southwest Harbor.
2. A public hearing shall be held prior to the adoption of any amendment. Notice of the hearing shall be provided at least seven (7) days in advance of the hearing.

**SECTION II. PURPOSES**

**A. The purposes of the Ordinance are:**

1. to assure the comfort, convenience, safety, health and welfare of the people of the Town of Southwest Harbor.
2. to protect the environment; and
3. to promote the development of an economically sound and stable community.

**B. The Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met and that the **proposed subdivision meets the following review criteria of Title 30-A, MRSA, Section 4404.****

1. **POLLUTION:** will not result in undue water or air pollution; In making this determination, the Board shall at least consider:
  - a. the elevation of the land above sea level and its relation to the flood plains;
  - b. the nature of soils and sub-soils and their ability to adequately support waste disposal;
  - c. the slope of the land and effect on effluents;
  - d. the availability of streams for disposal of effluents; and
  - e. the applicable health and water resources rules and regulations.
2. **WATER:** has sufficient water available for the reasonably foreseeable needs of the subdivision;
3. **GROUND WATER:** will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
4. **EROSION:** will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
5. **STORM WATER:** will provide adequate storm water management;
6. **SEWAGE PROPOSAL:** will provide for adequate sewage waste disposal;
7. **SOLID WASTE DISPOSAL:** will provide for adequate solid and sewage waste disposal;
8. **TRAFFIC:** will not cause unreasonable public road congestion or unsafe conditions with respect to use of the public roads existing or proposed;
9. **AESTHETIC, CULTURAL AND NATURAL VALUES:** will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites,

significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife, or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

10. **SURFACE WATER:** will not adversely affect the quality of that body of water or unreasonable affect the shoreline of that body of water whenever the proposed subdivision is situated on whole or in part, within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river.
11. **CONFORMITY WITH LOCAL ORDINANCES AND PLANS:** is in conformance with the Southwest Harbor Land Use Ordinance and the Southwest Harbor Comprehensive Plan;
12. **FLOOD WATERS:** will determine if the subdivision is in a flood hazard area (if it is, the proposed plan must include a condition of plat 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).
13. **FRESHWATER WETLANDS, RIVERS, STREAMS OR BROOKS:** all potential freshwater wetlands regardless of their size and all rivers, streams and brooks within or abutting the subdivision shall be identified on maps submitted as part of the application; and
14. **FINANCIAL AND TECHNICAL CAPACITY:** must have adequate financial capacity to meet the above criteria of this Ordinance.

### **SECTION III. PREAPPLICATION WORKSHOP**

**A. Purpose**

The purpose of the pre-application meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying , soils identification, and engineering by the applicant.

**B. Procedure**

1. The applicant shall present a sketch plan and make a verbal presentation regarding the site and the proposed subdivision.
2. The date and time of the on-site inspection shall be scheduled.

**C. Submission**

The Pre-application Sketch Plan, which may be a free-hand penciled sketch, shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The sketch plan should:

1. be supplemented with general information to describe or outline the existing conditions of the site and the proposed development;
2. be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located;
3. be accompanied by a copy of a portion of the USGS Southwest Harbor Quadrangle, Bartlett Island Quadrangle, and Bass Harbor, Maine – Hancock Co. 7.5 Minute Series topographic map showing the outline of the proposed Subdivision. (The majority of the USGS maps have a contour interval of 6 meters, approximately 20 feet).

**D. On-Site Inspection and Contour Interval**

Within thirty (30) days of the Pre-application Meeting, at least two members of the Board shall hold an on-site inspection of the property. The Board shall then determine and inform the applicant in writing if they require a more precise contour interval than on the USGS maps for the formal application. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street centerline and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is snow on the ground.

**E. Rights not Vested**

The workshop of the pre-application sketch plan and the on-site inspection shall not cause the plan to be a pending application under the protection of Title 1, MRSA, Section 302. This will occur at the time of the acceptance of the completed application.

**SECTION VI. PRELIMINARY PLAN FOR SUBDIVISION APPROVAL**

1. Within six months of a workshop, the sub-divider shall submit an application for approval with a preliminary plan based upon the sketch plan, plus any recommendations made by the Board.
2. All applications for preliminary plan approval for a subdivision shall be accompanied by an application fee of \$25 per lot or dwelling unit payable by check to the Town. A processing fee of \$40 shall be required to cover the cost of advertising and postal notification for public hearings. The Planning Board reserves the right to obtain an independent evaluation of a proposed development, to assist them in making necessary findings of fact. If the Planning Board deems such a study necessary, it will request a reasonable additional sum from the applicant to defray the cost of such study or studies. Any funds not utilized for consultant studies will be returned to the developer.
3. Upon receiving the application, the Town shall issue a dated receipt to the applicant and shall notify by mail all abutting property owners of the proposed subdivision, specifying the location of the proposed subdivision and a general description of the project.
4. Within 30 days from the dated receipt, the Planning board shall hold a meeting to determine if the application is complete. The Town shall notify the sub-divider in writing either that the application is a complete application, or, if the application is incomplete, the specific additional material needed to make a complete application.
5. After the Planning Board has determined that a complete application has been filed, it shall have 30 days within which to call a public hearing. The Town shall notify the sub-divider of the date, time and place of the public hearing, and cause this information to be published in a newspaper of general circulation in the Town, at least two (2) times, the date of the first publication to be at least 7 days prior to the hearing, and similarly notify the abutters to the subdivision by mail.
6. The sub-divider, or his duly authorized representative, shall attend the meeting of the Board to discuss the application.
7. The Board shall, within 30 days of a public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the sub-divider, make findings of fact on the application, and approve, approve with conditions, or deny the application based on the preliminary plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
8. When approval to a preliminary plan is granted, the Board must state the conditions of such approval, if any with respect to:
  - a. the specific changes which it will require in the final plan;
  - b. the character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and

- c. the construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.
9. 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 required additional changes as a result of the further study of the sub-division or as a result of new information received.

**B. Submission**

1. **Location Map:** The preliminary plan shall be accompanied by allocation map adequate to show the relationship of the proposed subdivision to the adjacent properties. This map shall show:
  - a. any existing subdivisions in the proximity of the proposed subdivision;
  - b. location and names of any existing and proposed streets;
  - c. any boundaries and designations of zoning districts; and
  - d. 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.
2. **Other Required Permits:** The preliminary plan application shall contain an advisory opinion from the appropriate Federal, State and Local agencies as to the application of their rules to this subdivision application.
3. **Preliminary Plan:** The preliminary plan shall be submitted in two 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 scale of not more than 100' to the inch. The Board reserves the right to request such scale as it deems appropriate to the application. In addition, eight copies of the plan(s) reduced to a size of 8 ½ by 11 or 11 x 17 inches shall be submitted to the Board.

**The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval:**

- a. proposed name of the subdivision, or identifying title; the name of the Town; and the Assessor's Map and Lot numbers;
- b. verification of right, title, or interest in the property;

- c. a standard boundary survey of the tract, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. (The corners of the tract shall be located on the ground and marked by monuments);
- d. a copy of the most recently recorded deed for the parcel. A copy of all covenants or deed restrictions, easements, rights-of way, or other encumbrances currently affecting the property.
- e. a copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision;
- f. the date the plan was prepared, north arrow, graphic map scale, names and addresses of the owner(s) of record, sub-divider, and individual or company who prepared the plan, and names of adjoining property owners.
- g. the number of acres within the proposed subdivision, location of property lines, existing buildings, water courses, vegetative cover type, and other essential existing physical features.
- h. the proposed lot lines with approximate dimensions and lot areas;
- i. the location, names and present widths of existing and proposed streets, easements, parks and other open spaces on or adjacent to the subdivision;
- j. the width and location of any roads or public improvements shown upon the official map and the Comprehensive Plan, if any within the subdivision;
- k. the parcels of land proposed to be dedicated to public use and the conditions of such dedication;
- l. the location of any open space to be preserved and a description of proposed ownership, improvements and its management;
- m. the names and addresses of the record owner, sub-divider, and individual or company who prepared the plan and owners of record of adjacent property, including any property directly across an existing public street from the subdivision;
- n. the zone in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision, noting particularly any Shoreland Zoning boundaries;
- o. the boundaries of any flood hazard areas in the 100-year flood elevation delineated on the plan if any portion of the subdivision is in the flood-hazard area.

- p. contour lines at the interval specified by the Board showing elevations in relation to Mean Sea Level (NGVD) shall be required for subdivisions near bodies of water.
- q. indication of the type of sewage disposal to be used within the subdivision;
  - i) connection to the public sewer: a letter shall be submitted from the Town indicating that there is adequate capacity within the Town's system to transport and treat the sewage;
  - ii) subsurface wastewater disposal: test pit analysis, prepared by a Licensed Site Evaluator, shall be provided for each proposed lot in the subdivision. The analysis shall include: lot number, test pit number, soil profile/condition (from Table 6-1 of the Plumbing Code), depth of pit, depth to seasonal high groundwater table, depth to restrictive layer, and depth to bedrock. A map showing the location of all test pits dug on the site shall be submitted.
  - iii) centralized or shared subsurface sewage disposal system: prepared by a licensed site evaluator for design flows less than 2000 gallons/day and prepared by a professional engineer if the design flow is greater than 2000 gallons/day. The Board may require that the applicant seek approval from the Department of Human Services. A map showing the location(s) of the system and legal documentation showing the necessary easements or covenants shall be submitted.
- r. indication of the type of water supply to be used within the subdivision:
  - i) public water supply: a letter shall be submitted from the Southwest Harbor Water Department indicating that there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary.
  - ii) evidence of adequate ground water supply and quality may be requested by the Board and this shall be submitted by a well driller of a hydro-geologist familiar with the area (this may include the request for a phosphate concentration impact analysis; if the proposed subdivision is within the watershed of a lake, stream, or coastal wetland, the phosphate concentration impact on the ground water must be determined);
- s. a copy of that portion of the State soil survey covering the subdivision including a legend and the soil interpretation sheet for the soils involved. (When the survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a highly intensity soils survey by a registered soil scientist indicating the suitability of soil conditions for those uses);



- t. A storm water management plan shall be provided that is designed for maximum lot coverage allowed in the zone or to some lesser lot coverage percentage that the applicant stipulates will not be exceeded plus the additional impervious areas created for roads..
- u. the location and size of existing and proposed sewers, subsurface sewage systems, water mains, wells, culverts, utilities, and drainage ways on or adjacent to the property to be subdivided;
- v. a determination must be made whenever a subdivision is situated, in whole or in part, within 250' of any wetland, great pond or river, or within their watershed, that the proposed subdivision will not adversely affect the quality or unreasonably affect the shoreline of any body of water;
- w. a map identifying all freshwater wetlands regardless of size, rivers, streams, and /or brooks within or abutting the proposed subdivision (reference may be made to the Southwest Harbor Wetlands and Soil Maps);
- x. an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours; (for subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets. Trip generation rates used shall be the mean value reported in Table 3 of "Development and Application of Trip Generation Rates", Kellercro, Inc., published by the Federal Highway Administration, January 1989); and
- y. a statement of adequate financial capacity demonstrating the financial ability of the sub-divider to complete the project.

## **SECTION V. FINAL PLAN FOR SUBDIVISION APPROVAL**

**A. Procedure**

1. Within six months after the approval of the completed application submitted with the preliminary plan, the sub-divider shall file with the Town the application for approval with the final plan of the project. This plan shall approximate the layout shown on the preliminary plan plus any recommendations made by the Board.
2. An additional processing fee of \$40 shall be required to cover the costs of advertising and postal notification for the public hearing.
3. Upon receiving the application with the final plan, the Town shall issue a dated receipt to the applicant.
4. Within 30 days from the dated receipt, the Planning Board shall hold a meeting to determine if the submission requirements for Final Plan have been met, and if not, what specific information is still needed. The Town shall notify the sub-divider in writing either that the application with the Final Plan as submitted has met the requirements, or if not, the specific materials needed to do so.
5. Within 30 days after the issuance of the dated notice sent to the sub-divider by certified mail, the Town shall notify the sub-divider of the date, time and place of the public hearing and cause this information to be published twice in a newspaper of general circulation in the Town, the date of the publication to be at least 7 days prior to the hearing, and similarly notify the abutters to the subdivision by certified mail.

When a subdivision is located within 500 feet of a Town boundary, the Board shall notify the Clerk and the Planning Board of the adjacent Town involved, at least ten days prior to the hearing.

6. The Board shall notify the Road Foreman, School Officials, 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.
7. Before the Board grants approval of the application with the final plan, the sub-divider shall meet the performance guarantee requirements contained in Section X.
8. The Board, within 30 days from the public hearing, shall make findings of fact, and conclusions relative to the standards contained in Title 30 – A, MRSA, Section 440-4407 (or as amended and in this Ordinance). If the Board finds that all standards of the Statute and this Ordinance have been met, they shall approve the application with the final plan. If the Board finds that any of the standards of the Statute or this Ordinance 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.

**B. Submission**

1. **Location Map:** As required under preliminary plan application.
2. **Final Plan:** As required under preliminary plan application. In addition:
  - a. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of 2 inches outside the border line on the left side for binding and a one inch margin outside the border along the remaining sides.
  - b. Space shall be reserved on the plan for endorsement by the Board.
  - c. The plan must bear the seal of a professional land surveyor or other authorized design professional. If the plan is prepared by or under the responsible charge of a professional land surveyor, the plan shall include the signature as well as the seal of that surveyor. Note: the Registry of Deeds is unable to accept a plan for recording unless it is embossed with the seal of an architect, professional engineer or registered land surveyor.
  - d. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the Town Offices, and three reproducible copies of the plan shall be submitted.
4. The application with the final plan submitted for approval shall include all of the information required under preliminary plan approval plus any recommendations made by the Board at that time and the following information:
  - a. 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.
  - b. A soil erosion and sedimentation control plan, prepared in accordance with the performance standards contained in the Land Use Ordinance. The Board may require that this plan be prepared by a qualified engineer.

**C. Approval of the Application with the Final Plan**

1. No plan shall be approved by the Board as long as the sub-divider is in violation of the provisions on a previously approved plan.

2. Upon findings of fact and determination as stated in the above paragraph A.9. and upon voting to approve the subdivision, the Board shall sign the final plans and specify any conditions for approval in writing on the plan. The Board shall specify in writing its findings of fact and reasons for any conditions of approval or denial. One paper copy of the signed plan shall be retained by the Board as part of its permanent records, one copy shall be forwarded to the Tax Assessor, and two shall be forwarded to the applicant (one of these plus the transparent original to be recorded by the applicant in the registry).
3. Any subdivision not recorded in the Registry of Deeds, within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void.
4. The approval by the Board of a subdivision 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 Town, approval of the plan shall not constitute an acceptance by the Town 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 Town Officers covering future deed and title, dedication, and provision for the cost of grading, development, equipment and maintenance of any such dedicated area.
5. Failure to commence substantial construction of the subdivision within 5 years of the date of approval and signing of the final 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.

## **SECTION VI. REVISIONS TO APPROVED PLANS**

### **A. Procedure**

An applicant for a revision to a previously approved plan shall, at least 14 days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. The procedures for preliminary plan approval shall be followed.

### **B. Submissions**

The applicant shall submit a copy of the approval plan, as well as two copies of the proposed revisions to the Town. Eight copies of the proposed revisions reduced to a size of 8 ½ by 11 inches or 11 by 17 inches shall be submitted to the Board. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the provisions of this Ordinance.

### **C. Scope of Review**

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed. The Board's decision shall be accompanied by findings of fact based on the review criteria.

### **D. Recording**

A subdivision plan presented for recording to the Registry of Deeds which is a revision to an existing plan shall cause the registry to:

1. indicate on the index for the original plan that it has been superseded by another plan and reference the book and page on which the new plan is recorded; and
2. ensure that the book and page on which the original plan is recorded is referenced on the new plan.

### **E. Re-subdivisions**

All re-subdivisions within ten years from the date of approval must go before the Planning Board as a revision to the subdivision.

## **SECTION VII. ENFORCEMENT**

### **A. Inspection of Required Improvements**

1. If a variance is granted and considered a condition of the final subdivision approval it must be recorded at the Registry of Deeds and attached to the deed within 90 days of its granting.
2. Any person who develops a subdivision in a manner other than as depicted on the final approved subdivision plan shall be subject to penalties and fines in accordance with SECTION VII – B of this Ordinance.
3. At least 5 days prior to commencing each major phase of construction of required improvements (see SECTION VIII.A.), the sub-divider or builder shall notify the Code Enforcement Officer (CEO) in writing of the time when he proposes to commence construction of such improvements, so that all Town specifications and requirements shall be met during the construction stages and to assure the satisfactory completion of improvements and utilities required by the Board.
4. If the CEO 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 sub-divider, he shall so report in writing to the Town and the sub-divider shall obtain permission to modify the plans from the Board.
5. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify them, revised plans shall be filed with the Town and the sub-divider shall obtain permission to modify the plans from the Board.
6. By December 1<sup>st</sup> of each year during which construction was done on the site, the Town shall have the site inspected by the Code Enforcement officer. The CEO 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. If the Board so determines that the services of a professional registered engineer are required to assess the stated problems, the expense shall be borne by the sub-divider.
7. Upon completion of street construction and prior to a vote by the Town Officers to submit a proposed Town way to a Town Meeting, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Town Officers at the expense of the applicant, certifying that the proposed Town way meets or exceeds the design and construction requirements of the Southwest Harbor Road Ordinance. 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.

8. Prior to the sale of any lot, the sub-divider shall install all monumentation for that lot as shown on the plan.

**B. Violations and Enforcement**

1. No plan of a division of land within the Town 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 this Ordinance.
2. No person, firm, corporation or other legal entity may convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
3. Any person, firm corporation or other legal entity who conveys 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 \$2,500 for each such conveyance, offering or agreement. The Town may institute proceedings to enjoin the violation of this section, and may collect attorney's fees and court costs if it is the prevailing party.
4. No utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
5. Development of a subdivision without Board approval shall be a violation of the law. Development includes grading or construction of roads, grading of land or logs, or construction of buildings which required a final plan approved as provided in these regulations and recorded in the Registry of Deeds.

## **SECTION VIII. 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 the final plan. In all instances the burden of proof shall be upon the applicant and the Board reserves the right to require additional information.

### **A. Required Improvements**

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

#### **1. Central Water Supply**

if a central water supply system is provided by the sub-divider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231: Maine Department of Human Services, Water Division).

#### **2. Surface Drainage**

The storm water management plan submitted in accordance with Section IX.B. shall be installed.

#### **3. Subsurface Sewage Disposal**

The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the state of Maine Subsurface Wastewater Disposal Rules. The test log shall include: lot number, test pit number, soil profile/condition (from Table 6-1 of the Plumbing Code), depth of pit, depth of seasonal high groundwater table, depth to restrictive layer, and depth to bedrock. In addition, on lots in which the limiting factor has been identified, 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.

#### **4. Monuments**

Permanent monuments shall be set at or within 50' of all lot corners and street intersections on the interior or exterior boundaries of the subdivision. Additional monuments shall be set such that no interior, exterior or highway boundary segment exceeds 750' between monuments. The final plan shall indicate the location and character of all monuments. Monuments shall be iron pins or pipes of not less than  $\frac{3}{4}$ " in diameter and may have "surveyor's caps", stone blocks with metal plates, or Federal Government specification monuments.



**B. Impact on Ground Water**

1. A ground water assessment by a qualified professional shall contain at least the following information:
  - a. a map showing the basic soils types;
  - b. projections of the subdivision's impact on ground water phosphate concentrations for subdivisions within the watershed of a lake;
  - c. 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.

**C. Land Features**

1. Topsoil shall be considered part of the subdivision and shall not be removed from the site.
2. Except for normal thinning, landscaping and cutting trees to provide access to direct sunlight, existing vegetation shall be left intact to prevent soil erosion and to minimize storm water runoff.
3. To prevent soil erosion in shoreline areas, a buffer strip of vegetation shall be preserved within a strip of land extending 75' inland from the normal high-water line of a water body or upland edge of a wetland. The standards are specified in the Southwest Harbor Lane Use Ordinance in **SECTION VII. PERFORMANCE STANDARDS**, Paragraph B, page 30.

**D. Access Control and Traffic Impacts**

1. **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 roads and within the subdivision, to avoid traffic congestion on any road and to provide safe and convenient circulation on public roads and within the subdivision.
  - a. The vehicular access to the subdivision shall be arranged to avoid traffic use of existing residential roads wherever possible.
  - b. Where a lot has frontage on two or more roads, the access to the lot shall be provided across the frontage where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
  - c. The roads giving access to the subdivision and neighboring roads which can be expected to carry traffic to and from the subdivision shall have adequate traffic carrying capacity or be suitable improved by the sub-divider to

accommodate the amount and types of traffic generated by the proposed subdivision.

2. **Subdivision access design for subdivisions entering into arterial roads:**

When the access to a subdivision is a road, the road design and construction **standards of Article IX** shall be met. Where there is a conflict between the standards in this section and the standards of Article IX, the stricter or more stringent shall apply.

- a. **General:** Access design shall be based on the estimated volume using the access classification defined below.

*Low volume access: <25 vehicles/day*

*Medium volume access: between low and high*

*High volume access: >400 vehicles/hour at peak volume*

- b. **Sight distances:** Accesses shall be designed in profile and grading and located to provide the required sight distance measured in each direction. The required sight distances are listed below for various posted speed limits.

(Sight distances shall be measured from the driver's seat of a 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 3 ½ feet, to the top of an object 4 ½ feet above the pavement).

- i) **Two land roads:** 10' for each mile/hour of posted speed limit shall be maintained or provided;
- ii) **Vertical alignment:** accesses shall be flat enough to prevent the dragging of any vehicle undercarriage. Low volume accesses shall slope upward or downward from the gutter line on a straight line of 2% or less for at least 25 feet followed by a slope of no greater than 10% for the next 50'. The maximum grade at any point over the entire length shall not exceed 10: Medium and high volume accesses should slope upward or downward from the gutter line on a straight slope of 2% or less for at least 25'. Following this landing area, the steepest grade on the access shall not exceed 8%.

3. **Construction materials/paving:**

- a. All accesses entering a curbed road shall be curbed with materials matching the road curbing. Sloped curbing is required around all raised channelization islands or medians.
- b. All accesses shall be paved with bituminous concrete pavement within the road right-of-way. All commercial accesses regardless of access volume shall be paved with bituminous concrete pavement within 30 feet of the road right-of-way,

**E. Retention of Open Spaces and Natural or Historic Features**

1. The Board may require the reservation of up to ten percent of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision or to maintain the scenic or natural beauty of the area. In determining the need for open space the board shall consider the proximity of the subdivision to neighboring open space or recreation facilities; the needs identified in the Town Comprehensive Plan for open space or recreation facilities in the areas surrounding the subdivision; the type of development and the demographic characteristics of potential residents in the subdivision; and the density or lot sizes of the development.
2. The Board may require that the development plans include a landscape plan that will show the replacement of trees and vegetation, graded contours, streams and the preservation of scenic historic or environmentally significant areas.
3. If the proposed subdivision contains any identified historical or archeological 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 suitably protected by appropriate covenants and management plans.
4. Any public rights of access to the shoreline, of a water body shall be maintained by means of easements or right-of-way, or should be included in the open space, with provisions made for continued public access.

**F. Conformance with the Comprehensive Plan, Other Plans, Codes and Ordinances**

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the Town, and with the provisions of all pertinent state and local codes and ordinances.

**G. Construction in Flood Hazard Areas**

When any part of a subdivision is located in special flood hazard area as identified by the Federal Emergency Management Agency (FEMA), 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. A permit must be obtained under the Southwest Harbor Flood Hazard Ordinance before any construction on these areas can begin.

## SECTION IX. ROAD AND STORM DRAINAGE DESIGN AND CONSTRUCTION STANDARDS

### A. General Requirements

1. The Board shall not approve any subdivision plan which has a road or roads which are intended for Town acceptance unless the proposed roads and the storm water management systems are designed in accordance with the Road Ordinance of the Town of Southwest Harbor. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the Town of any road or easement.
2. The sub-divider shall submit to the Board, as part of the final plan, detailed construction drawings as specified in the Road Ordinance for roads which are proposed to be accepted by the Town. They shall submit construction information for roads in the subdivision which are to remain private roads based on the standards in Section IX.B.
3. Where the sub-divider proposes improvements with existing Town Ways, the proposed design and construction details shall be approved in writing by the Town's Road Foreman or the Maine Department of Transportation, as appropriate.
4. Upon receipt of plans for a proposed Town Way, the Board shall forward one copy to the Town Officer and one to the Town Road Foreman for review and comments. Plans for roads which are not proposed to be accepted by the Town shall be sent to the Town Planner for review and comment.
5. Where the subdivision roads are to remain private roads, the following words shall appear on the recorded plan.

*"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 Town."*

### B. Private Road (or Right-of-Way) Standards

(see Land Use Ordinance for Road Standards)

#### 1. **Design Standards:**

<u>Description</u>	<u>Requirements</u>
Minimum right-of-way	12' 24' or 30'
Minimum vehicular way	9' for the 12' & 24' ROW 20' for the 30' ROW
Minimum grade	0.5%
Maximum grade	10%
Minimum tangent between curves of reverse alignment	100'
Minimum angle of street intersection	60°
Maximum grade at intersection (within	

50' of intersection)	3%
Minimum sight distance	150'

\*A 24' minimum vehicular way is required if more than 15% of the total traffic generated by any commercial and/or industrial use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds. The way must meet the Road Construction specifications in B.S.

2. **Construction Standards:**

<u>Road Materials</u>	<u>Minimum Requirements</u>
Aggregate Sub-base	12'
Crushed aggregate base course	3"

**C. Storm Water Management Design Standards**

1. Adequate provisions shall be made for disposal of all storm water generated within the subdivision and any drained ground water through a management system of swales, culverts, under drains and storm drains. The storm water management system shall be designed to conduct storm water flows to existing watercourses or storm drains.
  - a. Where a subdivision is traversed by a stream, river or surface water drainage way, or where the Board feels that surface water runoff to be created by the subdivision 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 within the subdivision and over the other properties. The Board may request that the storm water management systems be designed by a registered professional engineer.
  - b. Drainage easements of the storm water management systems shall be designed according to the Road Ordinance, section IX and X. When the subdivision discharges directly to the sea, peak discharge may be increased from predevelopment levels provided downstream drainage structures are suitably sized.
  - c. All components of the storm water management systems shall be designed according to the Road Ordinance, Sections IX and X. When the subdivision discharges directly to the sea, peak discharge may be increased from predevelopment levels provided downstream drainage structures are suitably sized.
2. Outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity. Whenever the storm drainage system is not within the right-of-way of a public way, perpetual easements shall be provided to the Town allowing maintenance and improvement of the system.
3. The storm drainage shall not overload existing storm drainage systems downstream from the subdivision. The sub-divider shall be responsible for financing any

improvements to existing drainage systems required to handle the increased storm flow.

**D. Additional Improvements and Requirements**

1. **Erosion Control.** The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction and cleanup stages.
2. **Cleanup.** Following road construction, the developer or contractor shall conduct a thorough cleanup of stumps and other debris from the entire street right-of-way. If onsite 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.

**E. Certification of Construction**

“As Built” plans shall be submitted to the Town Officers. Upon completion of road construction and prior to a vote by the Town Officers to submit a proposed public way to the legislative body, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Town Officers at the expense of the applicant, certifying that the proposed way meets or exceeds the design and construction requirements of the Road Ordinance and these regulations.

## **SECTION X. PERFORMANCE GUARANTEES**

### **A. Types of Guarantees**

With submittal of the application for final plan approval, the sub-divider shall provide one of the following performance guarantees for an amount required to cover the total construction costs of all covered improvements, taking into account the time span of the construction schedule.

1. either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
2. a performance bond payable to the Town issued by a surety company, approved by the Board of Selectmen and the Town Manager, or;
3. an irrevocable letter of credit from a financial institution, establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate. This credit must be approved by the Board of Selectmen and the Town Manager.

The conditions and amount of the performance guarantee shall be determined by the board with the advice of the Town Officers and/or Town Attorney.

### **B. Contents of Guarantees**

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspection 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 Town shall have access to the funds to finish construction.

### **C. Escrow Account**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the sub-divider, the Town shall be named as owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the sub-divider unless the Town 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 sub-divider and the amount withdrawn to complete the required improvements.

**D. 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 sub-divider, and the procedures for collection by the Town. The bond documents shall specifically reference the subdivision for which approval is sought.

**E. Letter of Credit**

An irrevocable letter of credit from a bank or other lending institution 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.

**F. 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 Code Enforcement Officer and whatever other agencies and departments may be 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.

**G. Default**

If, upon inspection, 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 shall so report in writing to the Board and the sub-divider or builder. The Town Officers shall take any steps necessary to preserve the Town's rights.



## **SECTION XI. WAIVERS**

- A. Where the Board makes written findings of fact that there are special circumstances of a particular site proposed to be subdivided, it may waive portions of the submission requirements, the standards, the requirements or the performance guarantees unless otherwise indicated in the regulations, to permit a more practical and economical development, provided 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 LUO, the Comprehensive Plan, or the provisions of this Ordinance and provided the criteria of the State Subdivision Law are met.
- B. In granting waivers to any of these regulations in accordance with the above, the Board shall require such conditions as will assure the objectives of these regulations are met.
- C. When the Board grants a waiver to any of the standards of these regulations, the final plan shall indicate the waivers granted and the date on which they were granted.

## **SECTION XII. APPEALS**

An aggrieved party may appeal any decision of the Board under these regulations of the Board of Appeals within 30 days.

## SECTION XIII. DEFINITIONS

In general, words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, any word or term defined in the Southwest Harbor Land Use Ordinance shall have the definition contained in that Ordinance, unless defined differently below; other words and terms used herein are defined as follows:

**Complete Application** – An application shall be considered complete upon submission of the required fee and all information required by these regulations for a preliminary plan. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

**Comprehensive Plan** – Any part or element of the overall plan or policy for development of the Town as defined in Title 30- A MRSA Section 4502.

**Contiguous Lots** – Lots which adjoin at any line or point, or are separated at any point by a body of water less than 15' wide.

**Covered Improvements** – Public improvements (roads, sidewalks, sewer, water), storm water control and erosion control.

**Densely-Developed Area** – Any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

**Driveway** – A vehicular way within a lot.

**Dwelling Unit** – Any part of a structure which, through sale or lease, is intended for human habitation. For example: a dwelling unit includes a single-family dwelling, each unit of a multi-family dwelling, a condominium unit, and a time-share unit.

**Final Plan** – The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

**Freshwater Wetlands** – Freshwater swamps, marshes, bogs and similar areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances to support, a prevalence of wetland vegetation typically adapted for life in saturated soil. They are not considered part of a great pond, coastal wetland, river, stream or brook.

**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 point identifying the following 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.

**New Structure** – Includes any structure for which construction began on or after September 23, 1088. The area included in the expansion of an existing structure is deemed to be a new structure for the purpose of this subchapter.

**NGVD** – National Geodetic Vertical Datum

**Official Submittal Date** – The date upon which the Board issues a receipt indicating a complete application has been submitted.

**Person** – Includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

**Preliminary Subdivision Plan** – The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

**Principal Structure** – Any structure in which the main use of the premises occurs.

**Recording Plan** – An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show on it information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts and building lines.

**Re-subdivision** – Any 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 sub-divider not indicated on the approved plan.

**Right-of-Way** – A legal right of passage over another person’s ground or the area over which a right-of-way exists.

**Road** – A vehicular way giving access to one or more lots.

**Streams, Brooks** – A channel between banks including the floodway and associated flood plain wetlands where the channel is created by the action of the surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of top soil containing water-borne deposits on exposed soil, parent material or bedrock.

**Structure** – (see SWH LUO and New Structure defined above)

**Substantial** – Expansion by more than 30% measured as a percentage of estimated total cost.

**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.



**WARRANT COMMITTEE ORDINANCE  
FOR THE TOWN OF SOUTHWEST HARBOR**

Approved 05/08/90  
Amended through 11/02/13

Attest a True Copy

*Marilyn J. Rowell*  
Town Clerk

## TOWN OF SOUTHWEST HARBOR WARRANT COMMITTEE ORDINANCE

### **SECTION I. Establishment.**

Pursuant to Title 30-A M.R.S.A. Section 3001, a Warrant Committee is hereby established for the Town of Southwest Harbor, Maine.

### **SECTION II. Composition; appointment; qualifications; terms; vacancies.**

The Warrant Committee (the Committee) shall consist of not less than seven (7) nor more than twelve (12) members who shall be appointed by the Board of Selectmen (the Board) and who shall be registered Voters of the Town. No elected official of the Town may be a member. Members shall serve for terms of three (3) years and may be reappointed. For transition purposes, the initial terms shall be staggered so that 1/3 of the terms shall expire annually. Vacancies shall be filled as soon as possible by appointment by the Board when they occur. Should a member retire prior to the end of an appointed term, the new appointee shall fulfill that term. Subsequent to appointment, members shall be sworn-in by the Town Clerk. Failure to attend three (3) consecutive meetings, either full or sub-committee, shall be cause for removal from the committee.

### **SECTION III. Officers; meetings; quorum; procedure**

The Committee shall annually elect a Chairman and a Vice-Chairman from among its members. The Chairman shall call meetings as necessary or when so requested by a majority of the members of the Committee or of the Board. A quorum necessary to conduct business shall consist of at least a majority of members. The Chairman shall preside at all meetings. The Committee shall maintain a record of all proceeding including all correspondence. A recommendation made by the Committee shall require at least a majority of all members, not members present, voting in favor for the recommendation to have passage. The Committee may adopt rules of procedure not inconsistent with this Ordinance which shall be approved by a majority vote of the Committee and of the Board.

### **SECTION IV. Powers and duties; authority; recommendations; official cooperation**

- A. The Committee shall have the following powers and duties;
1. To review and make recommendations to the Board on the municipal and school budgets as proposed by the Board according to the following procedure:
    - a. On or before the first Wednesday in February, the board shall submit to the Committee for its review the proposed municipal and school budgets for the next fiscal year.
    - b. On or before the 2nd Wednesday in March the Committee shall submit its recommendations concerning the proposed municipal and school budgets to the Board.
  2. To review and make recommendations to the Board on supplemental appropriations and expenditures to the municipal and school budgets as proposed by the Board.
    - a. The Board shall submit to the Committee for its review the proposed supplemental appropriations and expenditures to the municipal and school budget no later than sixty-five (65) days prior to public vote.
    - b. The Committee shall submit to the Board its recommendations concerning the proposed supplemental appropriations and expenditures to the municipal and school budget no later than 50 days prior to the public vote.
- B. The Committee's authority shall be advisory only. Any recommendation on a matter requiring Town Meeting action shall be printed with the article in the warrant and on the ballot, if any, along with such other recommendations as may be included by the Board or required by law.
- C. The Board shall cooperate with and provide the Committee with such information as may be reasonably necessary and available to enable it to carry out its function under this Ordinance.



**SOUTHWEST HARBOR WATER ORDINANCE**  
**REGULATION OF WATER USE**  
**FOR THE TOWN OF**  
**SOUTHWEST HARBOR**

Amended Through May 3<sup>rd</sup>, 2011

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Beatrice D. Grinnell, Town Clerk

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# **I. INTRODUCTION**

## **A. Title, Authority, and Administration**

1. This Ordinance shall be known and may be cited as the "Southwest Harbor Water Ordinance: Regulation of Water Use for the Town of Southwest Harbor".
2. This Ordinance is adopted pursuant to the provisions of Title 30-A, MRSA, Section 3001, Home Rule.
3. This Ordinance is consistent with the Rules and Regulations of the Maine Public Utilities Commission.
4. This Ordinance shall be administered by the Southwest Harbor Water Department, hereinafter referred to as the Utility.

## **B. Purpose**

1. The Southwest Harbor Water Ordinance seeks to provide an orderly procedure for all applicants that will ensure timely review and acceptance of properly constructed public waterworks utility extensions and connections.
2. Specifically, these procedures seek to ensure that existing users do not sacrifice any standard of service at the benefit of new users connecting to the system. Any reductions in service created by expansion into new areas will be evaluated considering the total impact on the entire system. Where an impact causes any potential reduction in the standards of service to existing users, new users requesting connections will be required to complete such system improvements as are necessary to eliminate any such impacts as a condition for obtaining a water connection permit.

## **C. Effective Date**

The effective date of this Ordinance is May 1, 1995, or as amended thereafter. A certified copy of this Ordinance is filed with the Town Clerk and is available to any member of the Public. Copies may be purchased at the Town Office or viewed online at no cost.

## **D. Validity**

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

## **E. Conflicts**

Should any section of this Ordinance be found in conflict with any other section or provision of this Ordinance or any other Ordinance or regulation, the more restrictive shall prevail.



## II. DEFINITIONS

**Billing Unit** – 100 cubic feet

**Customer** - Any person, firm, corporation, or governmental division who has applied for and is granted service, or who is responsible for payment of the service.

**MPUC** - Maine Public Utilities Commission

**Main** - a water pipe owned, operated, and maintained by the Utility, which is used to transmit or distribute water but is not a water service.

**Minimum Charge** – is the minimum amount billed regardless of water usage.

**Service pipe** - the pipe running from the main to the premises of the customer.

**Utility** - the Southwest Harbor Water Department

## III. TERMS AND CONDITIONS

- A. The terms and conditions specified in this Ordinance constitute a contract between the customer and the Utility. Any failure to comply with these rules and regulations, or requirements referenced herein, may be cause for refusal or discontinuance of service.
- B. The customer is further referred to the Utility's:
  - Construction/Technical Specifications (attached)
  - Cross Connection Control Program
  - Material Specifications (attached)
- C. The current Maine State Plumbing Code is considered the minimum requirement for areas not specifically addressed by this document or by reference.
- D. The Utility is further governed by the Southwest Harbor Water Department Terms and Conditions, which have been filed with the Maine Public Utilities Commission.

## IV. APPLICATION FOR SERVICE

- A. **Application.** Application for service on an existing service line shall be made at the Town Office, Southwest Harbor.
- B. **Charge to Establish Service.**

Application Fee: If it is not necessary for the Utility to visit the premises, the fee will be \$10. If it is necessary for the Utility to visit the premises the fee is \$50 during normal business hours, 8:30 am through 5:00 pm, Monday through Friday and \$105 during holidays and other than normal business hours.

Note: Applicant will be responsible for all other costs; e.g. materials, etc.

- C. **Unauthorized Use of Water/Tampering with Utility Property.** Use of water is confined to the premises named in the service application. There shall be no tampering with or operating of Utility property - including but not limited to hydrants, standpipes, valves (main line), service line valves or meter/remote readers - without the authorization of the Utility. If a customer supplies a contractor with water for building purposes, the customer is responsible for metering arrangements, backflow prevention, and all charges. Unauthorized use of water is considered theft of services. Damages resulting from such tampering will be charged to the Customer.
- D. **Authorized Use of Hydrants.** Fire hydrants, including private hydrants, may not be used for any purpose other than to extinguish fires unless prior permission is given by the Utility. In any case, fire hydrants may not be opened by any person other than an agent of the Utility, a duly authorized representative of the Town or as authorized by the Utility. Damage resulting from unauthorized use will be charged to the customer.
- E. **Service Interruption.** The Utility will provide notice of any planned shut-off to affected customers at least twenty-four (24) hours in advance of the interruption of service. The Utility will give notice of any unplanned shut-off when practicable.
- F. **Liability.** The Utility is not responsible for damage caused by discolored or unsatisfactory water service which may be caused by cleaning of pipes, reservoirs, standpipes, the opening and closing of any valves or hydrants, or any abnormal condition, unless caused by a lack of reasonable care by the Utility. The Utility will not be responsible for meeting unusually high water quality standards for specialized customers.

V. **NEW SERVICES**

- A. **Town Authorization.** A "Request for Water Service - Town Authorization" form must be completed and signed by the authorized Town officials before the utility will supply service to new account/applicants. At that time, applicants shall pay the established application and service fees for new connections/accounts.
- B. **Prior to the Start of any Work.**
  - 1. The Contractor shall provide to the Town evidence that all State and Local regulations are being complied with:
    - a. The Contractor shall present any and all permits issued to him. These shall include but are not limited to any State or Local road opening permits, Local building permits, or water use permits. Permits shall be present on the job site before and during the job.
    - b. The Contractor shall be responsible for ensuring that all State and Local regulations are complied with throughout the term of the job.
    - c. The Contractor must show proof of all necessary insurances.

2. All taps of 2" or less shall be made by the Utility without exception. Should the job require a tap larger than 2", the Contractor shall be responsible for securing other resources to make the actual tap. Prior to the commencement of the job, the Contractor shall present the name and qualifications of the persons contracted to make the tap to the Director of Public Works of the Town for approval.
3. The Contractor shall submit all documentation required to the Town Office no fewer than three (3) working days prior to the day that the Contractor wishes the work to begin.
  - a. All work will be scheduled on a regular working day for the Utility (Monday through Thursday) and shall not be scheduled on either a weekend day or an observed holiday.
  - b. All work will be done so that the starting time of the job will be no earlier than 7:00 a.m. and the job will be completed no later than 2:00 p.m. unless prior arrangements have been made with the Public Works Director.

**C. During the Installation of the New Water Service.**

1. A Utility representative shall be present during the connection from the main to the curb box.
2. The Utility representative will:
  - a. locate and mark the location of the main and mark the area that requires excavation up to the point where the curb box will be located; and
  - b. note to the Contractor the depth and any other details of the installation as may be required and is available.
3. The Contractor shall:
  - a. be responsible for any and all excavation required;
  - b. be required to expose the main fully and provide access to the point at which the curb box will be located (the excavation will be accomplished in such a way as to provide the Utility representative a safe area to make the main tap and subsequent installation of the service line to the curb box); and
  - c. cut any pavement required to prepare for the actual digging.
4. The curb box will be placed by the Utility representative in such a location so as to not cause any hazard or inconvenience to either State or local roadway operations including traffic flow, snow removal or water runoff.
5. Once the Utility representative has made his connection to the curb box, the installation of the service line from the curb box to the customer's structure shall be the responsibility of the Contractor. (The Utility shall

only assume responsibility of the service connection between the main and the curb box).

6. After all connections have been made, all excavations will be filled as required by State and Local regulations including the replacement of any pavement removed.
7. All service lines shall be at a minimum depth of five (5) feet. If conditions are such that five (5) feet is not possible, the line shall be insulated with Styrofoam at the direction of the Director of Public Works or a designated representative. Insulation shall be closed cell foam, R-75, of a thickness and configuration approved by the Utility.

**D. Winter Construction.** No new service or extension of mains will be installed for the convenience of a customer during winter conditions between November 1 and April 1. Special cases will be considered by the Director of Public Works--such as service lines not crossing paved areas.

**E. Private Fire Protection.** Customers requiring private fire protection must contact the Utility to determine the availability of fire service at their location. Fire service, if available, will be installed at the customer's expense, within the bounds of the public way or right-of-way. The fire service line, after installation, will be owned and maintained in the public right-of-way by the Utility. The Utility does not guarantee any quantity of water or pressure available through a fire protection system and shall not be held liable for the lack thereof. The owner of the service shall determine, from time to time, the adequacy of the supply through the fire service by conducting tests of the private system. Timely notice must be given to the Utility so a representative of the Utility can be present to observe the test. The fire service line must be a separately dedicated line and must not be connected to the regular building water service line.

**F. Inadequate Water Pressure.** In services where the normal operation pressure could be expected to fall below twenty (20) pounds per square inch, a "Limited Service Contract" as approved by the MPUC is required. Whenever water pressure at any fixture in a maximum flow condition (based on Hunters Curve) after allowing for friction, elevation and other pressures, is less than fifteen (15) pounds per square inch, a hydro-pneumatic pressure -variable speed pump or other means which will provide said fifteen (15) pounds pressure shall be installed. Services utilizing a booster pump or other means to provide fifteen (15) pounds or greater shall be equipped with an approved double check valve assembly located between the stop and waste valve and the water meter, unless a variance is requested and approved.

**G. Excessive Water Pressure.** When water pressure is in excess of eighty (80) pounds per square inch, an approved type of pressure regulator preceded by an adequate strainer shall be installed by the customer, and the pressure reduced to eighty (80) pounds per square inch or less. The pressure reducing valve shall be located between the stop and waste valve and the water meter unless a variance is granted by the Director of Public Works.

- H. **Fluctuation in Pressure Caused by Customer.** A customer may not install or use any device which will affect the Utility's pressure or water quality without prior Utility authorization.
- I. **Safeguarding Direct Pressure Devices.** Customers must install vacuum, temperature, and pressure relief valves or cutouts to prevent damage to a direct pressure water device or secondary system supplied by an automatic feed valve.

## VI. WATER LINE EXTENSIONS

- A. **Town Constructed Water Line Extension** - Water line extensions may be constructed by the Town under public contract if, in the opinion of the Board of Selectmen, the number of properties to be served by such extension warrants its cost. Under this arrangement the property owner shall pay for the installation of the water service from the property line to the residence or place of business in accordance with the requirements of this Ordinance. Property owners may propose water line extensions within the Town in accordance with the following procedures:
  1. When abutting property owners wish to have public water facilities extended beyond the existing service area, a majority of the property owners must petition the Board of Selectmen by written petition.
  2. The signed petition must be presented to the Board of Selectmen at a regular or special meeting of the Board for their consideration.
  3. Upon receipt of the petition, the Board of Selectmen shall request recommendation on the proposed project from the Department of Public Works.
  4. The Department of Public Works will prepare a report concerning the feasibility as well as an estimated cost of the construction which shall be submitted to the Board of Selectmen.
  5. The Board of Selectmen shall, if they deem the project feasible both from a construction and a financial standpoint, request the Town Manager to submit a recommendation for financing.
  6. The Board of Selectmen, when in agreement with the proposed financing, shall request the Town Assessor in conjunction with the Department of Public Works to prepare a list of the abutters to be benefited, and to submit this list to the Town Manager for mailing of the estimated assessment. The estimated assessment will be based upon 100% of the estimated project costs to serve the total number of benefited property owners. Benefited shall mean any property abutting the new water line, whether or not requesting service.
  7. The Board of Selectmen shall set the annual simple interest rate to be charged on those assessments which are desired to be paid on a term basis.

8. The Town shall send notices of the estimated assessments and the interest rate to be charged on the assessments paid over an extended period of time to all abutting property owners to be benefited by the proposed project. Benefited property owners may choose to pay their assessment in a lump sum or over an extended period of time not to exceed five (5) years, or some other period of time agreeable to the Board of Selectmen. The assessment plus interest shall be payable in four equal payments per year at the rate previously set by the Board of Selectmen. The Manager shall require all benefited property owners who choose to pay their assessment over an extended period of time to execute an agreement which shall be filed at the Hancock County Registry of Deeds and at the office of the Southwest Harbor Town Clerk.
9. The Board of Selectmen will authorize the construction of the project when 75% of the estimated assessments have been signed and returned by the benefited property owners.
10. A Public Hearing will be held by the Board of Selectmen at which time the actual assessment will be considered legally established and any benefited property owner's grievances will be heard.
11. The Department of Public Works will have final plans and specifications prepared and will determine if the project can be done by Town forces or by contract. (If by contract, the usual bidding procedure will be followed as required by Maine Municipal Law.)
12. Once the project is complete, the Director of Public Works will determine the actual project cost, to include design and inspection fees, if appropriate, and notify the Board of Selectmen that the project is complete and usable.
14. The Town will prepare and mail the actual amount of the assessments to be made to each benefited property owner. The assessment shall be based upon 100% of the actual project cost. The benefited property owner assessment shall be calculated as follows:

Total project cost divided by the number of potential benefited abutting property owners. Non-residential properties shall be assessed a percentage based on projected water usage, but not to be less than the residential share of total cost, as determined by the Director of Public Works. Subsequent hook up to the water line beyond initial benefited abutting property owners will decrease the user share to cost ratio with pro-rated refunds to those benefited abutting property owners who have already paid and subsequent payment to other benefited abutting property owners will be reduced proportionately.
15. Benefited property owners shall make their applications for water connection at the Town Office. Upon application, the benefited property owner shall pay to the Town the water connection fee in addition to the water extension assessment fee. All benefited property owners shall have connected to said water line extension within two (2) years after the water line is deemed usable.

16. The Town will make water line extension assessment refunds without interest, if additional benefited property owners are connected to the requested water line extension. The water line extension assessment refunds will be made to the benefited property owners of record at the time of the connection.
17. No benefited property owner refunds will be made after a period of ten (10) years from the date the Board of Selectmen deem the water line extension complete and usable.

**B. Private Water Line Extensions Constructed Within Public Ways -** If the Town does not elect to construct a water line extension under public contract, the developer (property owner, building contractor, etc.) may construct the necessary extension, if such extension is approved by the Board of Selectmen in accordance with the requirements. Said developer must pay for the entire installation, including all expenses incidental thereto. The design of the water line extension shall be as specified in this Ordinance. The installation of the water line extension shall be subject to periodic inspection by the Department of Public Works or its designated agent. The decision of the Department of Public Works shall be final in matters of quality and methods of construction. The cost of water line extensions thus made shall be totally absorbed by the developer. Private systems constructed within public ways will remain privately owned until such time as at least one other customer requests connection to the private system and all appropriate easements have been filed and other requirements have been met.

1. The developer shall prepare a detailed report with substantiating data included concerning the estimated cost of the proposed water line extension construction.
2. The Assessor in conjunction with the Department of Public Works shall prepare a list of abutters to be benefited by the proposed private water line extension. In the case of the water being extended in a public road for connection to the existing Town main, persons or properties abutting the new line along said road, and having an adequate, functioning water system shall not be required to connect to the new line.
3. Upon receipt of the report from the developer, the Board of Selectmen shall schedule a Public Hearing on the proposed water line extension. The Town shall send notices of the Public Hearing by registered mail stating the reason, date, time and location for the hearing.
4. The Board of Selectmen, when in agreement with the proposed private water line extension construction, the proposed construction specifications, and the proposed construction costs, and any requirements they wish to apply as a part of their approval, will authorize the construction of the project.
5. The developer shall notify the Town when the private water line extension project has started and when it is complete. The Department of Public Works shall make periodic inspection of the construction project and prepare a report to the Board of Selectmen stating the status of the project

and whether the water line extension has been installed and constructed in conformity with the Town specification.

6. The developer shall prepare and execute all necessary documents to the Board of Selectmen's satisfaction for the dedication of the privately constructed water line to the Town.
7. Upon receipt of the executed dedication documents and a satisfactory report from the Department of Public Works regarding its final inspection, the Board of Selectmen shall accept said water line extension and deem the water line extension usable.
8. Benefited property owners requesting connection to the water line extension shall make application for connection to the water line at the Town Office. Benefited property owners shall pay, upon application, the Water Connection Fee and a Water Line Extension Assessment Fee. The Water Line Extension Assessment Fee will not be charged after a period of ten (10) years from the date the Board accepted the water line extension from the developer.
9. The Water Line Extension Assessment Fee shall be as calculated in Section VI.A.14 and 19.
10. The Town shall make Water Assessment Fee refunds to the developer when benefited property owners are connected to the water line extension. The Water Assessment Fee collected by the Town shall be paid to the developer.
11. No Water Extension Assessment Fee refunds will be made after a period of ten (10) years from the date the Board of Selectmen accepted the dedication of said water line extension from the developer.

**C. Privately Constructed.** If the Town does not elect to construct a water line extension under public contract, the property owner, builder, or developer may construct the necessary water line extension, if such extension is approved by the Board of Selectmen in accordance with the requirements. The cost of water line extensions thus made, including all building water lines, shall be absorbed by the developers or property owners. Each building water line must be installed and inspected as previously required and the inspection fees shall be paid by the Owner(s) or developer. Design of the water lines shall be as specified in the Construction/Technical Specifications referenced in this Ordinance. The inspection by the Public Works Director, or his agent, and the expenses for this inspection shall be paid for by the owner, builder or developer. The Public Works Director's decisions shall be final in matters of quality and methods of construction.

## **VII. OWNERSHIP OF SERVICE**

**A. Utility Ownership.** The Utility shall own, and maintain, the service pipe, including the curb stop within the limits of the highway. Applicants for new services will be responsible for the cost of the installation of this section of the service pipe.



- B. **Customer Ownership.** The owner shall, at his or her own expense, also install, own and maintain the service pipe between the curb stop and the water meter. To avoid potential problems regarding the location of the service pipe, the customer is required to consult with the Utility prior to the installation or renewal of their service pipe.

**VIII. PIPE AND FITTINGS**

- A. The customer is referred to the Utility's Material Specifications (attached).\*
- B. **Stop and Waste Valves.** Additionally, the service pipe will be equipped with water stop and waste valves located on both sides of the meter. These valves are installed, owned, and maintained by the owner. The service pipe is to be equipped with adapters supplied by the owner compatible with the meter couplings which are supplied by the Utility. These adapters are installed, owned and maintained by the customer.

**IX. SERVICE PIPE AND INSTALLATION**

- A. The customer is referred to the Utility's Construction/ Technical Specifications (attached).\*
- B. **Valve Box Location.** Valve boxes for water mains and services shall be at least five feet from all structures and at least two feet from all shrubs and trees.

**X. METERING**

- A. **Service Pipe.** The owner's service pipe is to be located such that the water meter can be installed within two (2) feet of the point of entry of the building served as measured along the water pipe.
- B. **Meter Size.** The Utility will determine the size of the meter to be installed (both temporary and permanent).
- C. **Additional or auxiliary meters.** Meters for showing subdivision of water use must be furnished, installed, read, and maintained at the customer's own expense.
- D. **Installation.** The customer or his agent may have a water meter installed after contacting the Utility or by making an appointment to be present if deemed necessary.
- E. **Separate Shut-Offs.** Except as provided in Chapter 810, each unit of a multi-unit structure will shall have its own meter. The Utility requires separate, external shut-offs in acceptable locations always accessible to the Utility.
- F. **Remote Meters.** All new services will be equipped with remote-read meters furnished by the Utility. All existing services will be refitted with remote-read meters as Utility funding allows. These remotes will be installed at Utility expense.
- G. **Mobile Homes.** Meters for mobile homes will be installed either inside the unit or an approved pit will be constructed at the Owner's expense.

- H. **Pit Meters.** Meters installed in pits will be remote-read meters.
- I. **Synchronization.** Remote readers and their respective meters must be read and compared for synchronization at least once every eight (8) years by the Utility.
- J. **Location of Reader.** Remote readers will be installed in a protected outside area accessible at all times. The owner is responsible for the care of, and any damage to, the remote reader.
- K. **Condition of and Access to Fixtures.** A customer must maintain the plumbing and fixtures within his/her premises in good repair and protect them from freezing. The meter shall be located in a warm, clean, dry, and accessible area such that it can be serviced and read during normal business hours. The owner is responsible for all labor, overhead, material and equipment costs associated with repairing damaged or frozen water meters. Painting of meters constitutes damage.
- L. **Repair of Damaged Meters.** The charge for the repair of all meters damaged due to improper care by the customer will be the present price of the replacement meter as charged to the Utility by its supplier and any other costs incurred, to include the cost of labor for removal and reinstallation.
- M. **Meter Testing.** The utility will test its water meters according to the schedule and standards in Chapter 620. Upon customer request, the Utility will test the customer's water meter at no charge unless the customer requests more than one test in 18 months. If the customer requests a test more frequently, the Utility may require the customer to pay a deposit to cover the cost of the tests. If a meter tested at the customer's request does not conform to standards, the Utility will adjust the customer's bill according to the provisions of Chapter 620. If the meter conforms to standards, the Utility may continue to use the meter at the customer's premises and retain the deposit.
- N. **Charge for Testing Meters at Customer's Request.** The customer will be charged the cost to the Utility to have the meter tested at a certified testing facility.

## XI. BILLING

- A. **Billing Period.** The Utility bills its customers on a quarterly basis.
- B. **Terms of Payment.** All bills are due and payable upon presentation, and are considered past due ninety (90) days from the billing date. Payments are to be made at the Town Office. Failure of the customer to receive a bill or disconnection notice does not relieve him/her of the obligation of its payment nor from the consequences of non-payment.
- C. **Returned Checks.** The utility charges a fee over and above the amount of the check, for any check returned by the bank. The charge is the greater of \$5.00 per check or the amount the bank charges the utility, not to exceed \$15.00. The utility will furnish the customer with proof of any bank charges in excess of \$5.00.

## **XII. DISCONNECTION AND RECONNECTION OF SERVICE**

- A. Credit and Collection Procedures.** Procedures are based upon Chapter 810 (residential) or Chapter 860 (non-residential) of the MPUC regulations.
- B. Collection Trip Fee.** If Utility personnel must visit a customer to disconnect for non-payment and, in lieu of actual disconnection, the customer pays or makes a payment arrangement, a collection trip fee of \$20.00 will be charged.
- C. Reconnection Fee.** The Utility will charge a reconnection fee of \$50.00 during normal work hours - and \$105.00 at any other time to restore water service, if the service was disconnected for: non-payment of bills; violation of any of the terms and conditions in this Ordinance; fraudulent use of water; dangerous conditions; violation of Commission rules; or upon customer request if the disconnection is for more than five (5) days.
- D. Fire Services.** Customers wishing to cancel fire service protection must notify the Utility in advance and in writing, and must have permission in writing from the appropriate Fire Department Official. Physical shut-off of the fire service and/or private hydrant(s) will not be made by the Utility until the prescribed notice has been made.

## **XIII. CROSS-CONNECTION CONTROL PROGRAM**

- A.** The customer is referred to the Utility Cross-Connection Control Program for additional information.
- B. Compliance.** All customers - both new and existing - will comply with all provisions of the Utility approved Cross-Connection Control Program regarding installation, inspection, maintenance, and testing of approved backflow prevention devices. All requirements of the Utility's cross-connection control program must be met before water service will be supplied to new accounts.
- C. Containment Approach.** The program utilizes a containment approach requiring installation of an approved backflow prevention device at the water service entrance. The customer is responsible for installation, maintenance, and - as necessary - testing of the backflow prevention device.

## **XIV. ACCESS AND AVAILABILITY**

- A. Access.** An employee of the Utility, having properly identified himself, shall have free access during regular business hours to all premises supplied with water to permit reading of the water meter and/or inspection of the plumbing system.
- B. Availability.** Routine work (initial turn-on, set-remove meter, etc.) requires a minimum twenty-four (24) hour notice. Routine scheduling shall be 8 a.m. - 2:30 p.m. Monday - Friday (excluding holidays). Twenty-four (24) hour emergency service will continue as usual.

## **XV. FUNDING SOURCES**

- A. Capital and Infrastructure Expenses - Debt service incurred on or after May 4, 2010 for Capital Expenditures and Infrastructure Expenditures shall be financed using the Town's general fund. All debt service existing prior to May 4, 2010, as well as any debt service incurred on or after May 4, 2010 for purposes other than Capital Expenditures and Infrastructure Expenditures shall be financed through a water service charge.**
- B. Operational Expenses - The source of revenues needed for Operational Expenditures shall be a water service charge.**

For purposes of this section, the following definitions shall apply:

1. **Capital Expenditures: An outlay of funds for the acquisition or improvement of a fixed asset with an expected useful life of at least twenty (20) years which extends the life or increases the productivity of the asset, and for which the expense is generally capitalized and depreciated over the estimated useful life of the asset.**
2. **Infrastructure Expenditures: An outlay of funds for the basic facilities, equipment, installations and appurtenances (e.g. distribution lines) needed for the functioning of the Water Department and having an expected useful life of at least twenty (20) years.**
3. **Operational Expenditures: An outlay of funds required to allow the Water Department to meet expenses incurred in the ordinary course of operating the Water Department and the public water system.**