

Town of Allentown

Adult Business Ordinance

I. Purpose and Findings

- A. Purpose: The purpose of this chapter is to regulate sexually oriented businesses which, unless closely regulated may have serious secondary effects on the community. These secondary effects include, but are not limited to the following: depreciation of property values, deterioration of neighborhoods, increases in vacancy rates in residential and commercial areas, increases in incidents of criminal activity, increases in litter, noise, and the interference with residential property owner's enjoyment of their property in the vicinity of such businesses. It is the Town of Allentown's intent to prevent community-wide adverse impacts which can be brought about by the concentration of adult businesses in close proximity to each other or proximity to incompatible uses such as schools, churches, parks, public facilities and buildings and residentially zoned uses. The Town of Allentown finds that it has been demonstrated in various communities that the concentration of adult businesses causes adverse impacts described above and can cause businesses and residents to move elsewhere. It is, therefore, the further purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their close proximity to incompatible uses, while permitting the location of such businesses in certain areas.
- B. Authority: This ordinance is adopted under the authority and provisions of RSA 674:16.

II. Definitions

- A. Adult Business: means a "sexually oriented business" as defined in this Ordinance.
- B. Adult Arcade: means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disk players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- C. Adult Bookstore, Adult Novelty Store: means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction of description of "specified sexual activities: or "specified anatomical areas"; or

- b. Instruments, devices, or paraphernalia which are designated for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

- D. Adult Cabaret: means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - a. Persons who appear in a state of nudity or semi-nude; or
 - b. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
 - c. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- E. Adult Motel: means a hotel, motel or similar commercial establishment which:
 - a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified anatomical areas” or by “specified sexual activities”; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
 - b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - c. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.
- F. Adult Motion Picture Theater: means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified anatomical areas” or by “specified sexual activities.”
- G. Adult Theater: means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposures of “specified anatomical areas” or by “specified sexual activities.”

- H. Employee: means a person who performs any service on the premise of a sexually oriented businesses on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- I. Escort: means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- J. Escort Agency: means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- K. Establishment: means and includes any of the following:
 - a. The opening or commencement of any sexually oriented businesses as a new business;
 - b. The conversion of an existing business, in whole or in part, whether or not a sexually oriented business, to any sexually oriented business;
 - c. The additions of any sexually oriented business to any other existing sexually oriented business; or
 - d. The relocation of any sexually oriented business.
- L. Licensee: means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- M. Nude Model Studio: means a place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of New Hampshire or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partially by public taxation; or in a structure:
 - a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
 - b. When in order to participate in a class a student must enroll at least three days in advance of the class; and

- c. When no more than one nude or semi-nude model is on the premises at any one time.
- N. Nudity or a State of Nudity: means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- O. Person: means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- P. Semi-Nude or Semi-Nude Condition: means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- Q. Sexual Encounter Center: means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between person of the opposite sex;
 - b. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
- R. Sexually Oriented Business: means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- S. Sexually Oriented Business License: or “license” in this chapter refers to a Conditional Use Permit to be issued by the Planning Board to operate a sexually oriented business and/or a “license” issued by the Board of Selectmen for employment in a sexually oriented business. Neither license shall be transferable.
- T. Specified Anatomical Areas: means:
 - a. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - b. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.
- U. Specified Criminal Activity: means any of the following offenses:
 - a. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual

assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

b. For which:

- i. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- ii. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- iii. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- iv. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

V. Specified Sexual Activities: means any of the following:

- a. The fondling or other erotic touching of human genitals, public region, buttocks, anus, or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- c. Excretory functions as part of or in connection with any of the activities set for the in (a) though (b) above.

W. Substantial Enlargement: of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) , as the floor areas exist on the date this ordinance takes effect.

X. Transfer of Ownership or Control: of a sexually oriented business means and includes any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- c. The establishment of a trust, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

III. Classification

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers

IV. License Required

- A. It is a violation of this ordinance:
 - a. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town of Allenstown Planning Board pursuant to this ordinance.
 - b. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Town of Allenstown Board of Selectmen pursuant to this ordinance.
 - c. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.
- B. An application for a license must be made on a form provided by the Town of Allenstown.
- C. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including finger prints) as to enable the Town of Allenstown to determine whether the applicant meets the qualifications established in this ordinance.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each

applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

- E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
- a. If the applicant is:
 - i. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 21 years of age;
 - ii. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - iii. Any other business entity, a corporation, Limited Liability Company, or the like shall state its complete name, the date of its incorporation, formation or establishment, evidence that the entity is in good standing under the laws of its state of establishment; any foreign business entity shall register with the State of New Hampshire as a corporation or limited liability company; the names and capacity of all officers, members, managers, directors and principal stockholders, and the name of the registered agent and the address of the registered office for service of process.
 - b. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.
 - c. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
 - d. Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinances from another municipality or governmental agency denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
 - e. Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city, town or county and, if so, the names and locations of such other licensed businesses.

- f. The single classification for which the applicant is filing.
 - g. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
 - h. The applicant's mailing address and residential address
 - i. A recent photograph of the applicant(s).
 - j. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.
 - k. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to designate scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
 - l. A current certified plot plan prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented business within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1,000 feet of the property to be certified. For the purposes of this Section, a use shall be considered existing or established if it is in existence at the time the application is submitted. Applications made to the Town of Allentown Planning Board and/or Zoning Board of Adjustment may satisfy this requirement.
 - m. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in viewing room or both of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, the applicant shall comply with the application requirements set forth in Section XIV of this Chapter.
- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Town the following information:
- a. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
 - b. Age, date, and place of birth;
 - c. Height, weight, hair and eye color;
 - d. Present residence address and telephone number;
 - e. Present business address and telephone number;

- f. Date, issuing state and number of driver's permit or other identification card information;
 - g. Social Security number; and
 - h. Proof that the individual is at least twenty one (21) years of age.
- G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:
- a. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - b. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, town, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
 - c. A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
 - d. A certified copy of the a criminal records check from the State of New Hampshire and any and all other states where the applicant has been charged with a criminal offense.

V. Issuance of License

- A. Upon the filing of said application for a sexually oriented business employee license, the Town of Allenstown Board of Selectmen may issue a temporary employee license to said applicant to permit recruitment purposes, however, the granting of such a license shall not be considered authority to commence operation or considered as a "preliminary approval" or evidence thereof regarding the formal licensing process. . The application process shall be completed within sixty (60) days from the date the completed application is filed. The application shall be submitted to the Building/Code Enforcement Department. The Building Code/Enforcement Department shall provide a copy of the application to the Police Department and Fire Department for review of applicable statutes and ordinances.

The Board of Selectmen shall receive testimony from relevant Town Departments prior to the issuance of any license under this ordinance. After the investigation, the Board of Selectmen shall issue a license, unless it is determined by a preponderance of evidence that one or more of the following findings is true:

- a. The applicant has failed to provide information reasonable necessary for the issuance of the license or has falsely answered a question or request for information on the application form;
 - b. The applicant is under the age of twenty one (21) years;
 - c. The applicant has been convicted of a “specified criminal activity” as defined in this ordinance;
 - d. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this or any other town ordinance; or
 - e. The applicant has had a sexually oriented business employee license revoked by the Town within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to the appeal as set forth in Section X.
- B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Board of Selectmen that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.
- C. Within 65 days after receipt of a completed sexually oriented business application, the Board of Selectmen shall approve or deny the issuance of a license to an applicant. The Town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following is true:
- a. The applicant is under twenty one (21) years of age;
 - b. An applicant or a person with whom the applicant is residing is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;
 - c. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - d. An applicant or a person with whom the applicant is residing has been denied a license by the Town of operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
 - e. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance;

- f. The premises to be used for the sexually oriented business have not been approved by the planning and zoning boards, health department, fire department, police department, and the building official as being in compliance with applicable laws and ordinance;
 - g. The license fee required by this ordinance has not been paid;
 - h. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- D. The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III of this chapter. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- E. The Health Officer, police department, fire department, and the Building Inspector shall complete their certification that the premises is in compliance or not in compliance within thirty (30) days of receipt for the application by the Town.
- F. A sexually oriented business license shall be issued for each type of business found in Section III.

VI. Fees

- A. Every application for a sexually oriented **business** license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee. Fee amount will be set by the Planning Board and stipulated on the application form.
- B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Town an annual non-refundable license fee of within thirty (30) days of the license issuance or renewal. Fee amount will be set by the Planning Board and stipulated on the application form.
- C. Every application for a sexually oriented business **employee** license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual non-refundable application, investigation, and license fee. Fee amount will be set by the Board of Selectmen and stipulated on the application form.
- D. All license applications and fees shall be submitted to the Building/Code Enforcement Department of the Town.

VII. Inspection

- A. An applicant or licensee shall permit representatives of the police department, health department, fire department, zoning and code enforcement department, or other Town departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

- B. A person who operates a sexually oriented business or his agent or employee commits a violation if he refuses to permit such lawful inspection of the premises at any time it is open for business.

VIII. Expiration of License

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.
- B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

IX. Suspension

- A. The Town of Allenstown shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:
 - a. Violated or is not in compliance with any section of this ordinance;
 - b. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

X. Revocation

- A. The Town shall revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Town shall revoke a license if it determines that:
 - a. A licensee gave false or misleading information in the material submitted during the application process;
 - b. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - c. A licensee has knowingly allowed prostitution on the premises
 - d. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - e. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
 - f. A licensee is delinquent in payment to the Town, or State for any taxes or fees past due.

- g. A licensee or employees of the licensee violate any provisions of Title XIII of the New Hampshire Revised Statutes Annotated.
- C. When the Town revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date of the revocation became effective.
- D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

XI. Transfer of License

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

XII. Location and Performance Standards of Sexually Orientated Businesses

- A. A sexually oriented business may not sell or display “obscene matter,” as that term is defined by the New Hampshire Revised Statutes Annotated, chapter 650:1 as it is amended.
- B. Location requirements:
 - a. A sexually oriented business is permitted ONLY in the Industrial Zone any of the following:
 - i. 1,000 feet from Another sexually oriented business;
 - ii. 750 feet from A zoning district boundary line;
 - iii. 1,000 feet from A Town boundary line;
 - iv. 1,000 feet from A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - v. 1,000 feet from a public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;

- vi. 1,000 feet from A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;
- vii. 1,000 feet from An entertainment business which is oriented primarily towards children or family entertainment; or
- viii. 1,000 feet from a licensed premise, licensed pursuant to the alcoholic beverage control regulations of the State.

b. In the event that it is not possible to locate any adult business anywhere within the Industrial District given the setback requirements depicted in section XII.B.a above, the applicant may apply for a special exception to relax one setback requirement if all of the following can be proven and met:

- i. There is a demonstrated need to reduce the setback in question
- ii. There will be no diminishment of abutting property values
- iii. Security provisions will be in place to address the concerns of abutting property owners
- iv. The adult business will be adequately screened with landscaping
- v. There is no other conflict with other provisions of the Town of Allenstown Zoning Ordinance or this Chapter.

C. Development and Performance Standards:

- a. The following development standards shall apply to ALL sexually oriented business:
 - i. No sexually oriented business shall be located in any temporary or portable structure;
 - ii. Trash dumpsters shall be completely enclosed by a screening enclosure so as not to be accessible to the public;
 - iii. Off-street parking shall be provided as specified in Site Plan Regulations and the Town of Allenstown Zoning Ordinance;
 - iv. The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times;
 - v. Any signage shall conform to the requirements of the Allenstown Zoning Ordinance and shall not contain sexually oriented photographs, silhouettes, or other pictorial representations;

- vi. All entrances to a sexually oriented business shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises;
- vii. No residential structure or any other nonconforming structure shall be converted for use as an adult business;
- viii. No residence, apartment, living quarters or mobile home shall be located on the parcel where an adult business is located

D. The following performance standards shall apply to all sexually oriented business:

- a. The establishment of any sexually oriented business shall require Site Plan approval from the Planning Board. As part of any application to the Planning Board, the applicant shall provide copies of any other permit required by the Town, State, or Federal government. No approval shall become final until local licensing requirements have been satisfied.
- b. The adult business shall not conduct or sponsor any special events, promotions, festivals, concerts, or similar activities which would create a demand for parking spaces beyond the number of spaces required for the business.
- c. No adult business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to “specified sexual activities” or “specified anatomical areas,” inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening.
- d. No loudspeakers or sound equipment shall be used by an adult business for the amplification of sound to a level audible beyond the walls of the building in which the business is located.
- e. All exterior areas of the adult businesses, including buildings, landscaping, and parking areas shall be kept free of trash and debris and maintained in a clean and orderly manner at all times. Hours of operation shall be from 1:00 p.m. to midnight, excluding Adult Motels.

XIII. Additional Regulations for Adult Motels

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.
- B. A person commits a violation if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

- C. For the purposes of subsection (B) of this section above, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

XIV. Regulations pertaining to the Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- a. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s station and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager’s station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 - b. The application shall be sworn to be true and correct by the applicant.
 - c. No alternation in the configuration or location of the manager’s station may be made without prior approval from the Town.
 - d. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated at each manager’s station at all times that any patron is present inside the premises.
 - e. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager’s station of every area of the premises to which a patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager’s stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which a patron is permitted access for any purpose, excluding restrooms, from at least one of the manager’s stations. The view required in this subsection must be by direct line of sight from the manager’s station.
 - f. It shall be the duty of the licensee to ensure that the view area specified in subsection 5 above remains unobstructed by any doors, curtains, partitions, walls,

merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted to the application filed pursuant to section 1 of this subsection above.

- g. No viewing room may be occupied by more than one person at any time.
- h. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- i. It shall be the duty of the licensee to ensure that the illumination described in subsection 8 above is maintained at all times that any patron is present in the premises.
- j. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- k. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- l. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- m. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- n. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48) inches of the floor.

- B. A person having a duty under subsections a) through n) of subsection A above commits a violation.

XV. Additional Regulations for Escort Agencies

- A. An escort agency shall not employ any person under the age of 21 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

XVI. Additional Regulations for Nude Model Studios

- A. A nude model studio shall not employ any person under the age of 21 years.
- B. A person under the age of 21 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years of age was in a restroom not open to public view or visible to any other person.

- C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A nude model studio shall not place or permit a bed, sofa, or mattress on the premises; except that a sofa may be placed in a reception room open to the public.

XVII. Additional Regulations Concerning Public Nudity

- A. It shall be a violation for a person who knowingly and intentionally, in a sexually oriented business, appears in a live state of nudity or depicts specified sexual activities.
- B. It shall be a violation for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a violation for an employee, while semi-nude, to touch a customer or the clothing of a customer.

XVIII. Prohibition Against Children in a Sexually Oriented Business

A person commits a violation if the person knowingly allows a person under the age of 21 years on the premises of a sexually oriented business.

XIX. Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of midnight and 1:00 p.m.

XX. Exemptions

- A. It is a defense to prosecution under Section XVII that a person appearing in a state of nudity did so in a modeling class operated:
 - a. By a proprietary school, licensed by the State of New Hampshire, a college, junior college, or university supported entirely or partly by taxation;
 - b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partially by taxation; or
 - c. In a structure:
 - i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - ii. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - iii. Where no more than one nude model is on the premises at any one time.

XXI. Enforcement

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of any provision of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. Offenses under this ordinance are punishable by a fine of up to \$1,000 per offense. The Building/Code Enforcement Department is responsible for enforcing this ordinance.

XXII. Severability

If any section, subsection, or clause of this ordinance shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

XXIII. Conflicting Ordinances Repealed

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

XXIV. Effective Date

This ordinance shall be enforced from and after March 19, 2010.

Allenstown Flood Hazard Area Overlay District

I. TITLE AND AUTHORITY

A. Title

The title of this District shall be the Town of Allenstown Flood Hazard Overlay District.

B. Authority

This ordinance is adopted under the authority granted pursuant to RSA 674:16, Grant of Power, RSA 674:21, Innovative Land Use Controls, and 674:56, Floodplain Ordinances.

II. PURPOSE

The purpose of the Flood Hazard Area Overlay District is to protect the health and safety of residents by promoting the most appropriate use of land in Flood Hazard Areas, as follows:

- A. Uses which will result in no increase in base flood levels, flows, peaks or velocity.
- B. Uses which will not increase the potential for flood damage to the owner's property or that of others.
- C. Uses which will protect the benefits provided to the community by the floodplain.
- D. Uses which will result in no increase in erosion and/or sedimentation or other degradation of water quality.
- E. Uses which will not increase the risk to public safety, or to emergency personnel during flood events, or result in an increase in the cost of public services above costs incurred when not in a floodplain.

III. FINDINGS

Certain areas of the Town of Allenstown are subject to periodic flooding, causing a serious threat to the health, safety and welfare of residents of these areas as shown by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the County of Merrimack, N.H dated April 19, 2010, or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010, or as amended.

IV. APPLICABILITY

All proposed development in the Flood Hazard Area Overlay District shall require a building permit.

The building inspector shall review all building permit applications for new construction, additions to existing structures, and substantial improvements to determine whether the proposed site is within the Flood Hazard Area Overlay District. If the site is determined to be within the Flood Hazard Overlay District, the building inspector shall review the application to

ensure that the proposal is in compliance with all provisions of the District including all applicable standards contained in Section XI Development Standards.

A. For all new, expanded or substantially improved structures located in Zone(s) A and AE the applicant shall furnish the following information to the building inspector:

- a. The as-built elevation (in relation to National Geodetic Vertical Datum/North American Vertical Datum (NGVD/NAVD)) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. If the structure has been flood proofed, the as-built elevation (in relation to NGVD.NAVD) to which the structure was flood proofed
- c. Any certification of flood proofing.

B. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement: "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

- (i) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
- (ii) the area is not a basement;
- (iii) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

- C. The building inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.
- D. The building inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- E. The building inspector shall determine the 100-year flood elevation in the following order of precedence according to the data available:
 - a. In Zone AE refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
 - b. In Zone A the building inspector shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site plan approvals).

V. BOUNDARIES

The provisions of this district shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the County of Merrimack, N.H dated April 19, 2010, or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010, or as amended, which are declared to be part of this ordinance and hereby incorporated by reference.

The provisions of the Flood Hazard Area Overlay District shall overlay and supplement the provisions of the underlying zoning district(s).

VI. DEFINITIONS

The following definitions shall apply ONLY to this Flood Hazard Area Management Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Allenstown.

Addition: An expansion of a structure outside of the footprint of the original building.

Area of Special Flood Hazard: The land in the floodplain within the Town of Allenstown subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE.

Base Flood: The flood having a 1 percent possibility of being equaled or exceeded in any given year.

Basement: Any area of a building having its floor sub grade on all sides.

Building: "Structure."

Compensatory Flood Storage: The replacement for any loss of existing flood storage caused by development within the floodplain.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operation or storage of equipment or materials.

FEMA: The Federal Emergency Management Agency.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and

Flood Insurance Rate Map (FIRM): The official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Allentown.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations or an examination and determination of mudslide or flood-related erosion hazards.

Floodplain or Flood-prone Area: Any land area susceptible to being inundated by water from any sources (see definition of "Flooding").

Flood proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

Floodway: See "Regulatory Floodway."

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

Functionally Dependent Use: A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure: means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or district preliminarily determined by the Secretary to qualify as a registered historic district;

- c. Individually listed on a state inventory of historic places in the state with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either:
 - i. By an approved State program as determined by the Secretary of the Interior; or
 - ii. Directly by the Secretary of the Interior in states without approved programs.

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 an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home: A structure, transportable in one or more sections that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level: The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New Construction: For the purposes of determining insurance rates, structures for which the "Start of construction" commenced on or after the effective date of an initial FIRM or after December 31 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

One Hundred-Year Flood: "Base Flood."

Recreational Vehicle: Defined as:

- a. Built on a single chassis.
- b. 400 square feet or less when measured at the largest horizontal projection.
- c. Designed to be self-propelled or permanently towable by a light duty truck.

- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special Flood Hazard Area: See “Area of Special Flood Hazard.”

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Start of Construction: Substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, 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 site, such as 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 a basement, footings, piers, or foundations of 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 part of the main structure.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50 percent of the market value of the structure. The market value of the structure should equal:

- a. The appraised value prior to the start of the initial repair or improvement; or
- b. In the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. This term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions or alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” This term does not apply to an “addition.”

Violation: The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3 (b) (5), (c) (4), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

VII. PERMITTED USES

The following uses are permitted provided they are consistent with the purposes of this ordinance and do not involve placement, expansion or construction of permanent structures of other materials that could impede floodwaters or become flood-carried debris:

- A. Agricultural activities consistent with current best management practices as published by the New Hampshire Department of Agriculture, Markets, and Food, including maintenance or improvements of existing crop or pasture land for continued agriculture use, as defined in Env-Wt 101.20 and described in Env-Wt 303.04(u).
- B. Forest Management consistent with current accepted best management practices. As specific in Logging Operations (Env-Wt 304.05):
 - i. All skid trails, truck roads and log landings shall be located far enough from streams or ponds so that waterborne soil particles will settle out before reaching the streams or ponds.
 - ii. Skid trails and truck roads shall be laid out using appropriate erosion control devices, as outlined in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, Department of Resources and Economic Development, April 1996, updated February 2000, so that the grade approaching a stream or pond is broken, and surface water is dispersed. Crossings of streams and wetlands shall be kept to a minimum and shall be located to minimize the impact in accordance with Env-Wt 302.04(b) and (c).
- C. Outdoor recreation, such as play areas, boating, hunting, fishing, trails for motorized or non-motorized use.
- D. Wildlife or fisheries management.
- E. Scientific research and educational activities.
- F. Home occupations and home businesses consistent with section 1102 of the Allenstown Zoning Ordinance.
- G. Replacement water and sewer systems, including on-site systems, provided that the applicant shall provide the building inspector with assurances that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and

discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

- H. Substantial improvement not involving an addition.

VIII. PROHIBITED USES

- A. New buildings or other structures except as allowed below by Special Exception.
- B. Processing or storage of excavation materials.
- C. Storage of construction or other materials which would impede flow of flood waters.
- D. Filling.
- E. Grading that results in obstruction of flood flows or reduces flood storage capacity.
- F. Dumping.
- G. Wastewater or septage treatment facilities.
- H. Storage of floatable, or toxic, hazardous, or regulated substances.
- I. Unsecured tanks.
- J. Junkyards.
- K. Landfills.
- L. Subdivisions of land that would create a parcel that had no developable land outside the Flood Hazard Area.

IX. USES BY SPECIAL EXCEPTION

The zoning board of adjustment may grant a Special Exception for the following uses if determined, based on evidence provided by the applicant, to be in conformance with the standards provided in Section XI below and the purposes of the Flood Hazard Area Overlay District listed in Section II above:

- A. Water impoundments for the purpose of creating a waterbody for wildlife, fire safety, on-site detention of stormwater runoff and/or recreational uses.
- B. Water-dependent uses, such as docks, boathouses, and water powered projects.

If not in floodway:

- C. Additions to or replacements of existing structures, including manufactured homes.
- D. Accessory structures to existing primary uses when it is not practicable to construct the accessory structure on a portion of the lot outside of the Flood Hazard Area Overlay District.

- E. One principal building on a preexisting lot of record with no developable land outside the Flood Hazard Area Overlay District.
- F. New or expanded septic systems if no suitable location exists for the system on a portion of the lot outside of the Flood Hazard Area Overlay District.
- G. Construction, repair or maintenance of streets, roads, and other access ways, including driveways, footpaths and bridges, and utility right-of-way easements, including power lines and pipe lines, wastewater collection facilities and pump stations, if essential to the productive use of land adjacent to the Flood Hazard Area Overlay District.
- H. Undertaking of a use not otherwise permitted in the Flood Hazard Area Overlay District, if it can be shown that such a proposed use does not involve the erection of structures or filling and is in accordance with all for the purposes of the District as listed in Section II, and those of the underlying zoning district.

X. NONCONFORMING USES

An existing use or structure as of the effective date of this ordinance may continue, even though it does not conform to the requirements of these regulations. Such nonconforming uses and structures may not be extended, enlarged, or re-established after being discontinued for more than one year.

Nor may a nonconforming use and/or structure be modified to create another nonconforming use and/or structure unless it is determined by the zoning board of adjustment that the proposed use will not increase the degree of nonconformance with the standards contained in these Regulations.

Reconstruction of an existing structure will be allowed for the same use, within the same building footprint, and of the same or smaller dimensions as existed within 12 months prior to the reconstruction, provided the construction meets all applicable development standards of this ordinance.

XI. DEVELOPMENT STANDARDS

A. General Standards within the Flood Hazard Overlay District:

1. All development, including new construction, additions, substantial improvements and fill shall be:
 - a. Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. Constructed with materials resistant to flood damage.
 - c. Constructed by methods and practices that minimize flood damages.
 - d. Designed to result in no increase in flood levels during the flood event.

2. No encroachments or development may be located in the floodway unless a registered professional engineer certifies that the proposed development will not result in any increase in base flood levels.
3. All new construction and additions to any residential or nonresidential structure shall have the lowest floor, including basement, together with attendant utility and sanitary facilities, elevated to no lower than *two* feet above the base flood elevation.
4. All utilities, including electrical, heating, ventilation, plumbing, air conditioning, and other service facilities, including ductwork shall be elevated or made of flood resistant materials up to *two* feet above base flood elevation, and designed and located to prevent water from entering or accumulating within the components during conditions of flooding.
5. All new buildings and additions to existing buildings must be constructed on foundations that are approved by a licensed professional engineer or constructed on properly designed and compacted fill (ASTM D-698 or equivalent) that extends beyond the building walls before dropping below the level which is *two* feet above the base flood elevation and has appropriate protection from erosion and scour. The fill design must be approved by a licensed professional engineer.
6. All recreational vehicles shall either: be on a site for fewer than 180 consecutive days; be fully licensed and ready for highway use; or meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (c) (6) of Section 60.3. These regulations specify that recreation vehicles need to be built on enclosed areas to lift the lowest floor to the required freeboard height and that the enclosed areas must have openings to allow the floodwaters to enter and exit. The design of the openings must meet or exceed the minimum criteria listed in this ordinance. If the minimum criteria are not feasible, then the openings have to be designed by a licensed professional engineer or architect, who must certify the openings.
7. Where new or replacement water and sewer systems, including on-site systems, are proposed in a special flood hazard area the applicant shall provide the building inspector with assurances that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to the or contamination from them during periods of flooding.
8. The space occupied by fill, including mounded septic systems, or structure below the level which is *two* feet above the base flood elevation shall be compensated for and balance by a hydraulically equivalent volume of excavation taken from below the base flood elevation. All such excavations shall be constructed to drain freely to the watercourse.

9. Nonresidential development, including buildings and fill, shall be limited to 10 percent of the lot.
10. Proposed structures to be located on slopes in special flood hazard areas shall include adequate drainage paths to guide floodwaters around and away from the proposed structures.
11. The activity must be sited and designed to minimize disruption to shorelines and their banks.

B. Additional Standards for Watercourses

1. In riverine situations, prior to the alternation or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the building inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the building inspector, including notice of all scheduled hearings before the Wetlands Bureau.
2. The proposal must also be compatible with section 1104 of the Allenstown Zoning Ordinance.
3. The applicant shall submit to the building inspector certification provided by a licensed professional engineer assuring that the flood carrying capacity of an altered or relocated water course can and will be maintained.

C. Standards for Substantial Improvements Not Involving Additions

1. Residential structures to be substantially improved shall have the lowest floor (including basement) elevated to or above the 100-year flood elevation.
2. Nonresidential structures to be substantially improved shall have the lowest floor, including basement, elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
 - a. Be flood proofed so that below the 100-year flood 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 licensed 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.

D. Additional Standards for Manufactured Homes

All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least *two* feet above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

XII. VARIANCES AND APPEALS

- A. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the zoning board of adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33 I (b), the applicant shall have the burden of showing, in addition to the usual variance standards under state law, that the use, along with any mitigating measures proposed, will not:
 - 1. Result in any increase in base flood levels, flows, peaks or velocity.
 - 2. Increase the potential for flood damage to the owner's property or that of others.
 - 3. Result in increased erosion and/or sedimentation or other degradation of water quality.
 - 4. Increase the risk to public safety or emergency personnel during flood events, or increase the cost to the public by virtue of its location in a flood hazard area.

The variance must additionally be the minimum necessary, considering the flood hazard, to afford relief.

- C. The zoning board of adjustment shall notify the applicant in writing that:
 - 1. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and,
 - 2. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

- D. The community shall:
 - 1. Maintain a record of all variance actions, including their justification for their issuance, and
 - 2. Report such variances issues for its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

Proposed Table of Uses

USE:	AGR1: Ag/Rec 1	AGR2: Ag/Rec 2	B: Business	CLI: Commercial/Light Industrial	I: Industrial	I2: Industrial 2	OSF: Open Space/Farming	PARK: Park	R: Residential	VIL: Suncook Village
Single Family		Right					Right		Right	Right
Duplex		Right					Right		Right	Right
Ag/Farm	Right	Right					Right			
Recreation	Right								Right	Right
Water supplies				Right	Right					
Golf Courses	Exception						Right			
Family child care home							Right		Right	Right
Motels, hotels, lodging			Right	Right						
Campgrounds or overnight camps		Exception					Right	Right		
Airports				Right						
Cemeteries							Right			
Governmental Uses										Right
Excavation					Right					
Warehouses				Right	Right					
Carpports that would encroach on setback	Exception	Exception	Exception	Exception	Exception		Exception		Exception	Exception
Telecommunication Tower	Exception	Exception	Exception	Exception	Exception	Exception	Exception		Exception	Exception
Cluster Housing							Right		Right	Right
Group Child Care									Right	Exception
Retail Sales			Right	Right						Right
Community center										Right
Gardens when incidental to primary residential use	Right	Right					Right		Right	Right
Public utility				Right		Right				
Funeral parlors				Right					Exception	Exception
Professional Offices (Small-scale)			Right	Right						Right
kindergartens			Right				Right		Exception	Exception
multi-family									Right	Right
home occupation	Exception	Exception					Exception		Exception	Exception
manufacturing				Right	Right					
automobile sales			Right	Right						
Churches									Exception	Right
Hospitals			Exception	Right						
Filling Stations & Auto Repair			Right	Right	Right				Exception	Exception
Convenience Store			Right	Right	Right				Exception	Exception
Garden nursery		Right	Right	Right			Exception			

Museums				Right					
Lodging houses, hotels or motels			Right	Right					Exception
Clubs, private or public									Right
Newspaper or job printing plants				Right	Right				
Banks			Right	Right					Right
Places of amusement or assembly			Right						
Restaurants			Right	Right				Exception	Right
Any other business or service not involving manufacturing except manufacturing products sold on site			Right	Right	Right				Right
Office park			Right	Right	Right				
Sales outlets of goods which are manufactured in the Zone				Right	Right				
Warehouses				Right	Right				
Guardhouse for watchman			Right	Right	Right	Right			
Schools				Exception				Exception	Right
Sawmills				Exception	Right				
Outdoor Flea Markets				Right	Right				
Retail Sales			Right	Right	Right				Right
Wholesale			Right	Right	Right				
Forestry							Right		
Construction/contractors				Right	Right				
Landscape/building supply				Right	Right				
Health/personal care stores			Right	Right					Right
Data processing/hosting/information services			Right	Right					
Financial investment			Right	Right					Right
Real estate/leasing			Right	Right					Right
Professional/Scientific/Research			Exception	Right	Right				
Accounting/bookkeeping Administrative support			Right	Right					Right
Facilities support				Right	Right				
Facility maintenance consulting				Right	Right				
Health Clinic			Right	Right					
Nursing Home/Residential care			Right						Exception
Social assistance				Right					
Computer/IT specialists			Right	Right					Right
Pharmacy			Right	Right					Right
"Green" energy manufacturing/support				Right	Right				
"small" retail Shops									Right

Art Studio/Gallery										Right
Café/Wine Bar										Right
Agri-tourism	Right	Right					Right			
Water-dependent business	Right									
Manufactured Housing		Exception					Right			
Adult Business					Exception					
Institution						Right				
Home Occupation							Exception		Exception	Exception
Adult Day Care				Right						
Indoor Theater (movie, live performance)			Right	Right						
Private health or fitness club			Right	Right						
Office: health practitioner			Right	Right						
Medical/Dental Lab				Right	Right					
Bed and Breakfast									Exception	Right
Restaurant with drive through			Right	Right	Right					
equipment rental				Right	Right					
carwash			Right	Right	Right					
auto part sales			Right	Right	Right					
bus/rail/taxi passenger station				Right						
food processing plant, bakery, beverage bottling				Right	Right					
dry cleaning			Right	Right	Right					
veterinary hospital			Right	Right	Right					
farm stand	Exception	Right					Right		Exception	Right

Allenstown, NH

Proposed Zoning 2009-2010

Legend

 Parcel Boundaries

Proposed Zoning Districts

-  AGR1 - Ag/Rec. 1
-  AGR2 - Ag/Rec. 2
-  B - Business
-  CLI - Commercial/Light Industrial
-  I - Industrial
-  I2 - Industrial 2
-  OSF - Open Space/Farming
-  PARK - Park
-  R - Residential
-  VIL - Suncook Village

