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# BUILDING CODE ORDINANCE
# ELECTRICAL CODE ORDINANCE
# LIFE SAFETY ORDINANCE

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**Section 1 Adoption of Code By reference**

A. Pursuant to RSA 155-A, the Town of Allenstown adopts the following Codes by reference: The most current "International Building Code" and its revisions and the most current "International Residential Code" and its revisions.

B. Pursuant to RSA 155-A, the Town of Allenstown adopts the following Code by reference: The most current National Electrical Code (NFPA NO. 70) as recommended by the National Fire Protection Association.

C. Pursuant to RSA 155-A, the Town of Allenstown adopts the following Code by reference: The most current Life Safety Code (NFPA No. 101) as recommended by the National Fire Protection Association.

**Section 2 Administration and Enforcement by the Building Inspector**

The provisions of this Ordinance and of this Code shall be administered and enforced by the Building Inspector who shall be appointed by the Board of Selectmen, and who shall report violations of this Ordinance and of this Code to the Board of Selectmen.

**Section 3 Board of Appeal**

The Allenstown Board of Adjustment shall serve as the Board of Appeal under this Ordinance and this Code.

**Section 4 Penalty**

Whoever violated any provision of this Ordinance or this Code shall be subject to a fine not exceeding $25 for each separate offense. Each and every day or portion thereof, during which any violation is committed or continued, shall be deemed a separate offense, and each and every violation shall be deemed a separate offense.

**Section 5 Fees**

The Board of Selectmen shall prescribe the fees for permits or certificates issued under this Ordinance or this Code, and each application for a permit or certificate shall be accompanied by the prescribed fee.

**Section 6 Separability**

If any provision of this Ordinance or this Code or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance or Code and the application of such provision to other persons or circumstances shall not be affected thereby.

**Section 7 Other Provisions**

Nothing in this Ordinance or this Code shall be construed to prevent the enforcement of other laws or regulations, which prescribe more restrictive limitations.

A. The manufacture and installation of all manufactured homes, as defined in the Allenstown Zoning Ordinance, must also comply with all applicable provisions of Federal and/or State law.

**Section 8 Effective Date**

This Ordinance and this Code shall take effect upon adoption.

# ZONING ORDINANCE

## ARTICLE I - GENERAL

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**Section 101 Former Ordinance Repealed**

The Zoning Ordinance of the Town of Allenstown, New Hampshire, enacted in 1970, and amended, and the Mobile Home Ordinance of the Town of Allenstown, enacted in 1964, are hereby repealed rather than amended, and the following Ordinance is enacted.

**Section 102 Title**

This Ordinance shall be known and may be cited as the Town of Allenstown Zoning Ordinance of 1978, as amended.

**Section 103 Purpose and Authority**

This Ordinance is adopted pursuant to the authority conferred by RSA 31:60-89, for the purpose contained in RSA 31:62.

**Section 104 Effective Date**

This Ordinance shall take effect immediately upon passage. (March 12, 2002)

# ARTICLE II - DEFINITIONS

**Section 201 General**

In the interpretation and enforcement of this Ordinance, all words other than those defined specifically below, shall have the meanings implied by their context in the Ordinance or their ordinarily accepted meanings.

The word ***person*** includes a firm, association, organization, partnership, trust company or corporation as well as an individual.

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

The ***shall*** is mandatory, the word ***may*** is permissive.

The word ***lot*** includes the words lot or parcel.

Site plan review by the Planning Board is required for all uses other than one-or-two family dwellings.

**Section 202 Specific Definitions**

1. **Abandon** – The visible or otherwise apparent intention of an owner to discontinue a non-conforming use of a building or premises; or the removal of the characteristic equipment or furnishings used in the performance of the non-conforming use and replacing it with a conforming use.

2. **Abutter** – Shall be as defined in RSA 672:3, as amended and means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

3. **Access** - Management: Providing or managing access to land development while simultaneously preserving the flow of traffic on the surrounding road system in terms of safety, capacity and speed.

4. **Accessory Agricultural Use** – Any agricultural use that is customary, incidental and accessory to a single family home for the purpose of providing food and/or other agricultural products to the residents of that Home.

5. **Accessory Dwelling Unit** – As defined per RSA 674:21.b, as amended and means a second dwelling unit, attached or detached, which is permitted by a land use control regulation to be located on the same lot, plat, site, or other division of land as the permitted principal dwelling unit.

6. **Accessory Structure** (Agricultural/Farming) – Any structure including but not limited to seasonal housing for seasonal farm employees, barns, equipment storage, feed storage, farm stand, greenhouses, lath houses, energy producing devices that provide energy primarily for farm use, cold storages, manure and compost storage, and product processing centers.

7. **Accounting/bookkeeping/Administrative support** – Individual or organization engaged in the system of recording and summarizing business and financial transactions and analyzing, verifying, and reporting the results.

8. **Adult Daycare** – An establishment for the care and supervision of adults and which regularly receives for care individuals who are eighteen (18) years or older and unrelated to the operator of the agency, and which provides that care and supervision for any part of a day but less than twenty-four (24) hours.

9. **Agriculture and Farming** – Agriculture and farming as defined in RSA 21:34-a, as amended and mean all operations of a farm.

10. **Agritourism** – attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

11. **Alteration** – Any construction, reconstruction or other action resulting in a change in the structural parts, height, number of stories, number of exits, use or location of a building or other structure.

12. **Apartment** - Any dwelling unit for rent, including but not limited to a room, suite of rooms, enclosed porch, addition, or above garage space for the use of one or more persons as a housekeeping unit with space for eating, living, and sleeping and containing permanent provisions for cooking or sanitation. This definition replaces and supersedes any other definition of "Apartment" contained anywhere in these ordinances.

13. **Apartment Building -** Any building or portion thereof which contains three or more Apartments or dwelling units. This definition supersedes any definition of "Apartment House" contained anywhere in these ordinances.

14. **Aquifer** – a geological formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

15. **Arterial Road**: A road whose primary function is mobility, moving people and goods over long distances quickly and efficiently.

16. **Art Studio/Gallery** – Site where the creation or display of art takes place.

17. **Assisted Living Facility** – As defined per RSA 151-E:2.I and means a facility with individual living units where medical and social support services are provided on the basis of an individualized plan of care and which provides other common social support services.

18. **Bed & Breakfast** – As defined per RSA 175:1.VI and means a building or buildings regularly used and kept open as such in a bona fide manner for the feeding and lodging of transient guests. A bed and breakfast shall have at least 4 rentable rooms and an area of dining capable of accommodating the number of registered guests and be housed in the primary residence of the owners or operators and whose posted room rates shall include breakfast.

19. **Building** – A structure of more or less permanent construction, having a roof and intended to be used for sheltering people, animals, property or business activity i.e. houses, garages, factories and barns. Temporary structures such as tents are not buildings.

20. **Building/Contractor Yard** – A facility for the storage and maintenance of contractor's supplies and operational equipment.

21. **Backage Road** - Refers to a road located to the rear of a parcel that is not counted as, or is long enough to be frontage per density requirements in this Ordinance.

22. **Best Management Practice (BMP)** – Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and non-point source pollution, and promote stormwater quality and protection of the environment.

23. **Café/Wine Bar/Coffee House** – Small, informal establishment serving refreshments such as coffee, wine, made-to-order sandwiches, pastries and other light snacks made in an on-premise kitchen Games, conversation, small-scale musical entertainment and art for sale and display can be part of a café/wine bar/coffee house establishment. Such establishments are limited only to those that are eligible for an On-Premises Beverage and Wine License as described in RSA 178:20, as amended. Uses eligible for license under RSA 178-20-a and/or RSA 178-21 and/or RSA 178-22 as amended, are not included in this definition.

24. **Campground** – A plot plan of land upon which two or more campsites are located, established or maintained for occupancy by camping units as temporary living quarters for recreation, education or vacation purposes.

25. **Carwash** (commercial activity) – A permanent or fixed place or business equipped for washing cars and other motor vehicles. May include: hand-wash facility where employees wash car by hand; coin-operated self-wash facility; in-bay automatics; tunnel wash facility; waterless car wash; and, steam car wash. A temporary car-wash activity (such as a fund raising event) is not included in this commercial car wash definition.

26. **Carport** – A structure having a roof with at least three sides intended to shelter a motor vehicle, equipment or materials.

27. **Code Enforcement Officer** – The individual designated by the local governing body to administer and enforce the zoning ordinance, building codes and other building related codes unless otherwise specified in the Code as adopted by the Town.

28. **Collector Road -** A road connecting arterial roads to local roads, whose function is divided between providing mobility and access.

29. **Commercial Greenhouse** – Is a building in which plants are grown for commercial purposes. A greenhouse may be glass or plastic and includes a so-called "high-tunnel" structure. This definition does not include a so-called "cold frame" of reasonable size as used subordinate to a private residence.

30. **Commercial Stable** – A site where horses are kept and housed, a majority of which are not owned by the person/entity that owns the site.

31. **Community Center** – A meeting place used by members of a community for social, cultural, or recreational purposes.

32. **Condominium Conversions** – An apartment building with three or more living units for the use of individual families including the common ownership of the land.

33. **Condominiums** – Shall be defined per RSA 356-B:3, as amended and means real property, and any interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common area are vested in the unit owners.

34. **Convenience Store** – A retail store less than 7,500 square feet that is open long hours and sells some staple groceries and caters to local tastes. This definition does not include the sale of gasoline and is separate from a "filling station" as defined in this ordinance.

35. **Consumable Manufactured Goods** - Sale and/or consumption of goods which are manufactured or created on-site.

36. **Clubs, social** – As defined in RSA 175.1.XXI and means a group of individuals, incorporated under the laws of this state and may be affiliated with any national fraternal organization approved by the commission, either of which shall have been in existence for at least one year before the club's application for license. The premises occupied by the club, whether owned or leased shall not have been operated for pecuniary gain for that one-year period. The club shall be for the use of members and their guests and the property and fixtures of the club shall belong to the members. The members shall have the right to vote in club affairs and run for office.

37. **Cluster Housing** – Cluster housing is housing in a cluster development. A division of land into lots for use as individual residential building sites where said lots are arranged into one or more groups having area and yard measurements less then the minimum otherwise required by the Zoning Ordinance.

38. **Curb** - A stone, concrete or other improved boundary usually marking the edge of the roadway or paved area.

39. **Curb Cut -** The opening along the curb line at which point access to a public roadway is provided.

40. **Curve Number (CN)** – A numerical representation used to describe the stormwater runoff potential for a given drainage area based on land use, soil group, and soil moisture, derived as specified by the U.S. Department of Agriculture, Natural Resources Conservation Service (USDA/NRCS).

41. **Developer** – A person who undertakes or proposes to undertake land disturbance activities.

42. **Development** – For the purposes of this article, development refers to alterations to the landscape that create, expand or change the location of impervious surfaces or alters the natural drainage of a site.

43. **Disconnected Impervious Cover** – Impervious cover that does not contribute directly to stormwater runoff from a site, but directs stormwater runoff to on-site pervious cover to infiltrate into the soil or be filtered by overland flow so that the net rate and volume of stormwater runoff from the disconnected impervious cover is not greater than the rate and volume from undisturbed cover of equal area.

44. **Drainage Area** – Means a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

45. **Driveway -** A private roadway providing access to a street or highway.

46. **Duplex** – A single building designed for occupancy by two separate households which at a minimum has separate entrances and exits for each household, separate utility hook ups and metering, separate heating and cooling systems, separate kitchen, living areas, sleeping quarters and bathrooms.

47. **Easement** - A grant of one or more of the property rights by the owner to, or for the use by, the public, a corporation or another person or entity.

48. **Effective Impervious Cover** – Impervious cover that is not disconnected impervious cover.

49. **Erosion** – The detachment and movement of soil, rock, or rock fragments by water, wind, ice or gravity.

50. **Family Child Care Home** – A private residence where care, protection and supervision are provided for a fee, at least twice a week to no more than six (6) children at one time, including children of the adult provider and in which the operator resides.

51. **Farm –** Any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and as defined in RSA 21:34-a. as amended.

52. **Farmers' Market** – Means farmers' market as defined in RSA 21:34-a.

53. **Farm Parcel** – A tract or parcel of land devoted primarily to agricultural uses may contain a dwelling or other accessory uses.

54. **Farm Roadside Stand** – Means an on-farm, agricultural retail operation provided that: (A) at least 35 percent of the product sales in dollar volume is attributable to products from the farm or farms of the farm stand owner or farm stand operator; and (B) product sales not attributable to the farm or farms of the farm stand owner or farm stand operator shall be agriculturally related and may include, but not necessarily limited to, the sale of garden accessories, cheese, home crafts, cut flowers, dried flowers, value added products such as jams, jellies and baked goods from a farm stand kitchen. Proof of farm income may be required to determine conformity with these provisions.

55. **Farm Worker Dwelling** – A dwelling located on a farm for the purpose of housing an employee of that farm operation and his/her family. Also included in this use type would be multi-family dwelling(s) for seasonal employees in connection with an orchard or other agricultural use, which relies on seasonal employees who must be housed.

56. **Fence** – An artificially constructed barrier of metal or wood to separate areas.

57. **Filling Station/Gasoline Station** – A facility that dispenses petroleum products including but not limited to gasoline and diesel and may also offer for sale other goods items and supplies to motorists.

58. **Flea Market, Indoor or Outdoor**: is a type of bazaar where inexpensive or secondhand goods are sold or bartered. It may be indoors or outdoors. The flea-market vendors may range from a family that is renting a table for the first time to sell a few unwanted household items to a commercial operation including a large variety of new or used merchandise. Flea markets may have food vendors who sell snacks and drinks to the patrons.

59. **Food/Beverage Processing** – The creation, processing, packaging or bottling of foodstuffs and/or beverages for wholesale purposes.

60. **Front Lot Line** – Shall be defined as the side of a lot that contains at least the minimum required frontage on any street as dictated by the zone in which that lot lies and shall be

dictated by that line which any landowner plans to, or does declare as its intended street address. The lot line that the front entrance of any home or building shall abut as declared on any site plan. This definition replaces and supersedes any other definition of "Front Lot Line" contained anywhere in these ordinances.

61. **Frontage** – The length of any one property line of a premise that abuts a legally accessible street right-of-way.

62. **Funeral Home** – An establishment in which human remains are prepared for burial and in which wakes and funerals may be held.

63. **Garden Nursery** – A place where young trees or other plants are raised for transplanting, for sale, or for experimental study.

64. **Governmental Uses** – Excluding "Municipal;" a state or federal use of land.

65. **Group Child Care Center** – A building where care, protection and supervision is provided on a regular schedule, at least twice a week to seven (7) or more children including children of the adult provider.

66. **Grocery store/food market** – A store that specializes in, primarily, the retail of food products. Such stores may also offer nonfood household items including but not limited to household cleaners, pharmacy products and pet supplies.

67. **Groundwater** – As defined in RSA 485-C.2.VIII, as amended and means subsurface water that occurs beneath the water table in soils and geologic formations.

68. **Guardhouse for night watchman** – A building occupied by a guard on duty.

69. **Health/personal care store** – Retail store specializing in the sale of items, including medical equipment (hospital equipment, convalescent equipment, and hearing aids) and personal care products (cosmetics, hair care, toiletries and perfumes), etc.

70. **Heavy Manufacturing** – A manufacturing effort that is subject to state or federal environmental protection laws pertaining to manufacturing and industry.

71. **Hospital** – As defined in RSA 151-C:2 means an institution which is engaged in providing to patients, under supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of such persons. The term "hospital" includes psychiatric and substance abuse treatment hospitals.

72. **Home Occupation** – Any activity carried on for gain by a resident and conducted as a customary, incidental and accessory use in the resident's dwelling.

73. **Hotel** – A building with rooms offering transient lodging accommodations with a daily/weekly rate to the general public.

74. **Industrial Use** – Any manufacturing, compounding, processing, packing or treatment of goods and products.

75. **Infiltration** – The process by which water enters the soil profile (seeps into the soil).

76. **Impervious Cover/Impervious Surface** – A structure or land surface with a low capacity for liquid infiltration, including but not limited to pavement, roofs, roadways, compact soils and has a Curve Number of 98 or greater.

77. **Junk** – As defined by RSA 236:91 and means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

78. **Junk Yard/Salvage Yard** – An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation or an automotive recycling yard. The work does not include motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126. Defined as in RSA 236:112, (I), as amended.

79. **Lab/Research & Development/Biotechnology Research** – Facility for scientific experimentation, observation, testing and analysis.

80. **Land Disturbance or Land Disturbing Activity** – For the purposes of this Article, refers to any exposed soil resulting from activities such as clearing of trees or vegetation, grading, blasting, and excavation.

81. **Large Animal/Equine/Livestock Veterinary Facility** – Is a facility that can provide all facilities of veterinary medicine for large/equine/livestock animals including surgery, radiology, clinical pathology, dispensary and ward accommodation and provision for the 24 hour surveillance of animal patients. Services are also available on an emergency basis; the facility may be open 24 hours a day, 7 days a week.

82. **Live-stock** – Animals typically raised on farms or for agricultural purposes such as pigs, poultry including but limited to chickens, turkeys, pheasants, ducks and geese, horses, cows and cattle, sheep and goats and wild animals being domesticated for sale, labor or consumption including but limited to llamas, ostrich, buffalo, deer and catfish regardless of whether they intend to be kept as household pets. Dogs, domestic cats weighing less than 30 pounds and birds kept exclusively in a personal residence shall not be considered livestock.

83. **Local Road**: A road whose primary function is to provide access to adjacent development.

84. **Lodging House** – A building in which rooms are rented with or without meals to three or more but not exceeding twenty persons. A boarding house, rooming house or a furnished room house shall be deemed a lodging house.

85. **Lumberyard** – A commercial establishment where lumber is stored and sold to the general public.

86. **Marine Sales/Service** – Facility for the sales service and storage of marine vessels (boats, etc.).

87. **Manufactured Home**: A structure, designed to be a dwelling unit with or without a permanent foundation, that is transportable in one or more sections which in the traveling mode is eight feet wide or more in width or 40 feet or more in length or, when erected, is 320 or more square feet in area, and which is built on a permanent chassis.

88. **Manufactured Home Site**: An area or tract of land, or portion thereof, intended for the placement of one manufactured home within a manufactured home park.

89. **Manufacturing** – Is the use of machines, tools and labor to make things for use or sale. Manufacturing is industrial production, in which raw materials are transformed into finished goods on a large scale. Such finished goods may be used for manufacturing other, more complex products, such as household appliances or motor vehicles, or sold to wholesalers, who in turn sell them to retailers, who then sell them to end users (consumers).

90. **Median**: A barrier placed between lanes of traffic flowing in opposite directions or between parking spaces.

91. **Motel** – motor vehicle as defined in RSA 353:4 and means are only those public lodging buildings, including cabins and motor courts, where entrance is gained thereto directly from the outdoors to guest rooms.

92. **Motor Vehicle Garage** – Facility wherein technicians maintain or repair motor vehicles. Including Towing and storage incidental to repair provided outdoor storage of motor vehicles is screened from public view by solid fencing or permanent landscaping. The storage area shall not exceed 100,000 square feet without special exception.

93. **Motor Vehicle Rental** – Facility wherein vehicles are loaned to patrons for a period of time and returned to the owner as part of a financial exchange.

94. **Motor Vehicle Sales** – Sale of passenger vehicles and light trucks; includes sale of motorcycles and off-road personal vehicles (4-wheelers, ATVs, etc.).

95. **Multi-modal Transportation Hub/Facility** – Place where interface occurs between various transportation systems. Travelers may enter the facility by one means and leave by another. Modes include pedestrian, bus/rail, bike or motor vehicle.

96. **Municipal Recreation (outdoor or indoor)** – A recreation facility owned and operated by the Town of Allenstown.

97. **Municipal Uses** – A building or structure, together with accessory buildings, structures and appurtenances, owned and operated by the Town of Allenstown for the provision of essential public services, including privately owned and operating facilities under a continuing contract with a unit of government, for the provision of essential public services.

98. **Newspaper or printing plant** – Facility engaged in the means of producing reproductions of written material or images in multiple copies.

99. **Nontraditional/nonstructural stormwater management measures** – Design approaches to reduce runoff rates, volumes, and pollutant loads. Such techniques include, but are not limited to, minimization and/or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and use of practices that intercept, treat, and infiltrate runoff from developed areas distributed throughout the site (e.g. bioretention, infiltration dividers or islands, or planters and raingardens).

100. **Office Park** – Development in which many office buildings are grouped together. Offices may include but are not limited to service, professional or administrative uses. An office park may also include a small restaurant or café to provide day-time meals (lunch) to office park employees or workers.

101. **Outdoor Storage** – Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

102. **Owner** – A person with a legal or equitable interest in a property.

103. **Parking Aisle**: The area of a parking lot that allows motor vehicles ingress and egress from the driveways or streets.

104. **Parking Lot**: An outdoor area where motor vehicles may be stored for the purposes of temporary, daily or overnight off-street parking.

105. **Parking Space**: A temporary storage area for a motor vehicle.

106. **Pedestrian**: A person travelling on foot; a walker. A person operating a pushcart; a person riding on, or pulling a coaster wagon, sled, scooter, tricycle, bicycle with wheels less than 14 inches in diameter, or a similar conveyance, or on roller skates, skateboard wheelchair or a baby in a carriage. Pedestrian shall also include operators of so-called "Segway" personal transportation devices.

107. **Personal Service** – Facility where the talents of a person which are unusual, special or unique and cannot be performed exactly the same by another person. Examples include, but are not limited to massage parlor, photographer, cobbler, portrait painter, wood carver or hair/nail salon.

108. **Pervious Cover** – A land surface with a high capacity for infiltration.

109. **Petroleum bulk plant or terminal** – Means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

110. **Pharmacy** –Store engaged in the preparing, preserving, compounding or dispensing (via retail sale) of drugs. A pharmacy may also be engaged in the sale of personal care items, minor household items, snacks and other miscellaneous non-grocery items.

111. **Presite Built Housing**: A factory-built, single-family structure, which is manufactured or constructed under authority of 42 U.S.C. Sec. 5403, Federal Manufactured Home Construction and Safety Standards, and is to be used as a place for human habitation, but which is not constructed with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site and which does not have permanently attached to its body or frame any wheels or axles. A manufactured home is not a presite built home unless it has been converted to real property (i.e. affixed to a cellar/basement) and is taxed as a site-built dwelling. For the purpose of this Ordinance, a presite built home shall be considered the same as any site-built, single-family detached dwelling.

112. **Private Recreation (outdoor or indoor)** – Recreational facility owned and operated by a private business or not-for-profit entity; a recreational facility owned by an entity other that the Town of Allenstown, the State of New Hampshire or the United States Federal Government.

113. **Professional Offices** – An office wherein services are provided by individuals or employees in a recognized profession. Examples include but are not limited to: attorney, doctor, architect, accountant, chiropractor, dentist, engineer, surveyor, etc.

114. **Public Utility** – As defined in RSA 374-C:2.VI and means any corporation, company, association, joint stock association, partnership or person within the state which owns, operates or manages any plant or equipment for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of energy ultimately sold to the public and which is regulated by the New Hampshire public utilities commission.

115. **Public Water System** – A system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.

116. **Recreation Vehicle** – A vehicle which is:

    1. built on a single chassis,

    2. 400 square feet or less then measured at the largest horizontal projection;

    3. designed to be self-propelled or permanently towable by a light-duty truck;

    4. primarily designed not for use as a permanent dwelling, but as a temporary living quarters for recreational, camping, travel or seasonal use.

117. **Real Estate/Leasing Office** – An office engaged in the sale or leasing of real estate.

118. **Recharge** – The amount of water from precipitation that infiltrates into the ground and is not evaporated or transpired.

119. **Redevelopment** – The reuse of a site or structure with existing man-made land alterations. A site is considered a redevelopment if it has 35 percent or more of existing impervious surface, calculated by dividing the total existing impervious surface by the size of the parcel and convert to a percentage.

120. **Recycling Facility, Household Waste** – Facility involved in the processing of used household materials (including but not limited to glass, paper, metal, plastic) into raw materials for use in new products. Includes facilities engaged in actual materials processing as well as collection stations (i.e. "transfer stations") and shall be consistent with RSA 149-M, as amended. Does not include materials associated with RSA 236:112, (I), as amended.

121. **Regulated Substance** – As defined in Env-Ws 421.03 (f) or successor rule, Env Wq 401.03 (h). Includes petroleum, petroleum products and substances listed under 40CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate and (8) propane and other liquefied fuels which exist as gasses at normal atmospheric temperature and pressure.

122. **Restaurant** – Includes the following:

1. Sit-Down Restaurant:
   An eating establishment wherein table-side service is provided to diners; no drive-through or car-side service is provided. Can be combined with a take-out restaurant.

2. Take-Out Restaurant:
   An eating establishment where food is prepared and primarily taken off-site for consumption by patrons. Can be combined with a sit-down restaurant.

3. Drive-In Restaurant:
   An eating establishment that provides drive-up or car-side service.

123. **Retail Commercial Greenhouse** – A Commercial Greenhouse (see definition above) that sells products to end-users.

124. **Retail Landscape Supply** – A retail facility dedicated to the sale of landscape items and supplies used for end-users (tools, mulch, stone, flowers, trees, etc.).

125. **Retail Sales** – Sales of goods to end-users.

126. **Right-of-Way**: An easement held by the municipality or the state over the land owned by the adjacent property owners that allows the holder of the easement to exercise control over the surface and above and below the ground of the right-of-way.

127. **Sawmill** – A plant or factory where logs are sawed into boards.

128. **Season High Water Table** – The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that

increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.

129. **Secondary Containment** – A structure such as a berm or dike with an impervious surface that is adequate to hold at least 110 % of the volume of the largest regulated-substances container that will be stored there.

130. **Sediment** – Solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

131. **Senior Housing** – Housing that houses at least one person who is 55 years of age or older in at least 80% of the OCCUPIED units and adheres to a policy that demonstrates an intent to house persons who are 55 years of age or older. This definition shall also include over 62 age-restricted communities.

132. **Sensitive Area** – For the purpose this Article include lakes, ponds, perennial and intermittent streams, vernal pools, wetlands, and highly erodable soils.

133. **Sideage Road** – Refers to a road located on the side of a parcel that is not counted as, or is long enough to be frontage per density requirements in this Ordinance.

134. **Single Family Dwelling** – Is a detached, free-standing residential building. It is home to no more than one family.

135. **Sheet Flow** – Runoff that flows or is directed to flow across a relatively broad area at a depth of less than 0.1 feet for a maximum distance of 100 feet in such a way that velocity is minimized.

136. **Site** – The lot or lots on upon which development is to occur or has occurred.

137. **Street** – Any vehicular way that is: 1) an existing state or municipal roadway; 2) shown upon a plat approve pursuant to law; or 3) approved by other official action; including rights-of-way, whether improved or unimproved.

138. **Snow Dump** – For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

139. **Stratified-Drift Aquifer** – A geological formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

140. **Stormwater** – As defined per RSA 149-I:6-a.II and means stormwater runoff from precipitation, snow melt runoff, and street wash waters related to street cleaning or maintenance, infiltration, and drainage.

141. **Stormwater Runoff** – Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

142. **Structure** – Anything constructed or erected on the ground or which is attached to something located on the ground. Some structures are classified as buildings, radio and TV towers, sheds and permanent signs.

143. **Surface Water** – Stream, lakes, ponds, marshes, water-courses and other bodies of water, natural or artificial.

144. **Telecommunications Tower** – A structure situated on a non-residential site that is intended to be used for transmitting and receiving television, radio or telephone communications. Should be constructed of non-flammable material and not create a hazard to the surrounding area.

145. **Timber Activities/Timber Operations** – Facility involved with processing timber from a raw material into a useable material (i.e. logs into lumber).

146. **Total Impervious Cover** – The sum of Disconnected Impervious Cover plus Effective Impervious Cover.

147. **Traffic Study**: A traffic impact study to determine the effect of a proposed development, both on and off site, and propose appropriate mitigation measures.

148. **Traditional stormwater management measures** – Stormwater management methods that focus primarily on diverting and redirecting stormwater from a site as quickly as possible (e.g., stormwater ponds, vegetated swales).

149. **Undisturbed Cover** – A natural land surface whose permeability has not been altered by human activity.

150. **Vegetation** – Is defined to include a tree, plant, shrub, vine or other form of plant growth.

151. **Veterinary Hospital** – Is a facility that can provide all facilities of veterinary medicine including surgery, radiology, clinical pathology, dispensary and ward accommodation and provision for the 24 hour surveillance of patients. Services are also available on an emergency basis; the facility may be open 24 hours a day, 7 days a week.

152. **Veterinary Office** – Is a facility smaller than a veterinary hospital that can provide some or all facilities of veterinary medicine including surgery, radiology, and clinical pathology on an out-patient basis. A veterinary office may also provide emergency services during daily business hours (such as but not limited to 9AM to 5PM) but not 24 hours/7 days a week.

153. **Outdoor Flea Markets** – Shall be defined as any commercially run Flea Market, run for profit when held outside of the building/buildings of any property, not including privately held yard or tag sales.

154. **Warehouse** – A place where goods or merchandise are stored for commercial purposes. Example: rental storage for end-users, regional warehouse distribution to retail facilities, etc.

155. **Wellhead Protection Area/Sanitary Protective Radius** – As defined in RSA 485C:2, XVIII or the area around a public water supply well that must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Dw 373.12 and ENV-Dw 372.14 (for other public water systems).

# ARTICLE III - ADMINISTRATION

**Section 301 Building Inspector**

a. The provisions of this Ordinance and any amendments thereto shall be administered and enforced by the Building Inspector, who shall be appointed by the Board of Selectmen, and who shall report violations of this Ordinance to the Board of Selectmen.

b. Enforcement of this Zoning Ordinance shall be pursuant to RSA 676:17-b.

**Section 302 Building Permit Required**

Written application for a building permit must be filed by the owner, his agent or lessee with the Building Inspector for any of the following, and except as provided for emergencies under RSA 31:70, until a building permit has been obtained from the Building Inspector (or, if the permit is denied, until the Board of Adjustment has directed that a permit be issued), none of the following shall be commenced:

a. The erection of any new building, exterior sign or other structure.

b. The alteration, restoration, moving or demolition of any building, structure, exterior sign or part thereof.

c. The establishment of a professional office or home occupation pursuant to *Section 1102*, *Uses Not Permitted.*

d. Any use of premises which is to provided for in this Ordinance, including but not limited to a change in the nature of the use of any building or premises to a non-conforming use from any lawful prior use, or any change in lot size or shape which would result in a violation of area or dimensional restriction.

e. Temporary structures such as campers, park trailers and recreational vehicles used as living quarters in the RI & RII zone, open space and farm zone and used at residences located in a commercial/light industrial zone, industrial zone or business zone, shall not be occupied more than 21 days in a calendar year. Anyone obtaining a temporary permit shall be entitled to one 21-day extension unless the Code Enforcement Officer determines there is a substantial threat to public health, safety and/or welfare. The Board of Selectmen shall establish a fee for temporary permits.

**Section 303 Application for Building Permit**

Application for a building permit shall be upon an appropriate form as prescribed by the Building Inspector and shall be accompanied by:

a. Plans drawn to scale, showing actual shape, dimensions and location of the lot to be used, of existing buildings upon it, of alterations proposed for existing buildings and of proposed new dwellings.

b. Information as to the existing and intended use of each building, lot or part thereof, and as to the number of families, lodgers, or other occupants any building upon the premises is designed to accommodate.

c. Such further details as the Building Inspector may require to determine and evaluate the application for building permit.

**Section 304 Action on Application for Building Permit**
The Building Inspector shall determine whether an application for a building permit is in compliance with a permitted use as defined in this Ordinance. If the Building Inspector determines that it is, the application for permit shall be approved and a building permit issued. If the Building Inspector determines that it is not, the application shall be denied. The Building Inspector shall act upon any application within thirty (30) days after it has been filed.

**Section 305 Effect of Building Permit**
Issuance of a building permit pursuant to this Ordinance constitutes approval by the Town for the proposed use only under the requirements of this Zoning Ordinance.

**Section 306 Building Permit**
A building permit shall be valid for one (1) year from the date of issuance provided that work is commenced under the permit within six (6) months after issuance. Said permit may be renewed for a further period of one (1) year. On new building, "construction commenced" shall mean the completion of at least the foundation. After a foundation is constructed, buildings must be completed within one (1) year unless the time is extended by the Building Inspector for good cause. All permits issued prior to the enactment of this amendment shall expire one (1) year from the date of enactment of this amendment unless renewed under the above provision.

**Section 307 Duration of Building Permit**
A building permit shall become void if construction is not begun there under within twelve (12) months from the date of issuance of the permit. Permits may be extended once for no more than an additional twelve (12) months by the Building Inspector upon receipt of a written request for extension at least fourteen (14) days prior to the expiration of the original permit.

**Section 308 Transferability of Building Permit**
No building permit issued hereunder shall be transferable to a subsequent owner.

**Section 309 Building Permit of the Board of Adjustment**
On approval of an application, a variance, special exception or appeal to an administrative decision by the Board of Adjustment, the Building Inspector shall issue a building permit upon receipt of the written notice of the approval by the Board of Adjustment.

**Section 310 Fees**
The fees for building permits and use permits shall be established by the Board of Selectmen. Said fee shall accompany each application for a building permit or application for a use permit.

**Section 311 Use Permits**
Prior to a business occupying an existing building in any zone, including an approved location for a home occupation:

a. A written application for a use permit shall be submitted to the Building Inspector upon an appropriate form as prescribed by the Building Inspector.

b. A floor plan showing items such as, but not limited to, exits, interior walls, counter space, showcases and any other "obstacles", sprinkler heads if applicable and fire extinguisher and emergency lighting locations shall be submitted with the application for review by the Fire Prevention Officer.

*Prior to the issuance of a use permit*, inspection must be conducted by the Building Inspector and Fire Prevention Officer or Fire Chief. If the property is serviced by Town water and/or sewer, the Allenstown Sewer Department and Pembroke Water Works may conduct inspection as necessary. Use permit fees shall be set by the Board of Selectmen.

# ARTICLE IV - BOARD OF ADJUSTMENT

**Section 401 Creation and Appointment**

The establishment of a Board of Adjustment, in accordance with RSA 673:1, as amended, is hereby authorized and the Board of Adjustment which existed prior to the adoption of this Ordinance is hereby dissolved. The members of the Board of Adjustment shall be appointed by the Board of Selectmen. They shall be residents of the Town and shall serve without compensation. In accordance with the laws of the State of New Hampshire, the following provisions shall apply:

a. The Board of Adjustment shall consist of five (5) members. When the Board is first organized, one member shall be appointed to serve for one (1) years, one for two (2) years, and one for three (3) years, one for four (4) years and one for five (5) years, and thereafter the appointing authority shall annually appoint one member for a term of three (3) years. Said members shall be removable by the appointing authority upon written charges, and after public hearings.

b. The Board of Adjustment shall also include such alternate members as may be appointed by the Board of Selectmen pursuant to RSA 669:75, as amended.

c. No person may serve as a regular or alternate member of the Board of Adjustment while simultaneously serving as the Building Inspector (regular or assistant) for the Town of Allenstown. In addition, no more than one regular or alternate member of the Planning Board may simultaneously serve as a regular or alternate member of the Board of Adjustment.

d. When there is a permanent vacancy, the Board of Selectmen shall appoint a person to serve for the unexpired term.

e. The Board of Adjustment shall elect a chairman and secretary from its own membership.

**Section 402 Jurisdiction**

The Board of Adjustment shall have the following powers and duties of RSA 674:33, as amended, including the authority to:

1. To determine whether the administrative decision is in conformity with the provisions of this Ordinance and to interpret the meaning of the Ordinance in cases of uncertainty.

2. To authorize, upon appeal in specific cases, a variance from the terms of the Zoning Ordinance if the provisions of RSA 674:33.I, as amended are met.

3. REPEALED 03/03

**Section 403 Hearings**

For all appeals to administrative decisions on applications for permits authorized by this Ordinance, the Board of Adjustment shall hold a public hearing as prescribed by RSA 676:5, as amended.

The individual, or representative of the board issuing the administrative decision being considered for appeal, unless prevented by illness or absence from the State, shall attend all hearings and shall present to the Board of Adjustment, all plans, photographs or any other factual material which is appropriate to an understanding of the appeal.

The Board of Adjustment shall not continue a hearing to a future date except for good cause. Written notice of the decision of the Board shall be sent to the appellant and the Building Inspector forthwith.

**Section 404 Appeal Procedures**

Any person or any municipal department aggrieved by an administrative decision may appeal such decision to the Board of Adjustment.

Within thirty (30) days of the date of the decision of the Building Inspector, the appeal shall be entered at the Town Hall upon forms to be approved by the Secretary of the Board of Adjustment. The appellant shall set forth on said forms the grounds of this appeal and shall refer to the specific provisions of the Zoning Ordinance involved. Following the receipt of any appeal, the Secretary shall notify the Chairman of the Board of Adjustment. The appeal shall be in order for hearing at the next meeting of the Board of Adjustment followed by at least seven days and the publication or posting of the notice appeal.

An aggrieved party may appeal the decision of the Board of Adjustment to the Superior Court as provided by the laws of the State of New Hampshire.

**Section 405 Special Exceptions**

The Zoning Board of Adjustment shall hear all requests for special exception provided for in this ordinance. The Zoning Board of Adjustment shall grant such applications for special exception as meet the requirements of this section, the requirements of the section authorizing the exception and with such appropriate conditions as are deemed necessary and reasonable.

A. Special exceptions shall meet the following standards:

1. No hazard to the public or adjacent property on account of potential fire, explosion, toxic materials or hazardous activity.
2. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood due to the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust or other pollutants, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials.
3. No creation of a traffic safety hazard or unmitigated substantial increase in the level of traffic congestion in the vicinity.
4. No excess demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection and schools.
5. No significant increase of storm water runoff on to adjacent properties or public ways.
6. In an appropriate location for the proposed use.

7. No adverse effect on the health and safety of residents and others in the area and the proposed use shall not be detrimental to the use or development of adjacent or neighboring properties.
8. In the public interest and in the spirit of the ordinance
9. Requirements set forth in the ordinance for the particular use permitted by special exception.

B. Special exception approvals may be subject to appropriate conditions including but not limited to the following:

1. Front, side or rear setbacks in excess of the minimum requirements of this ordinance.
2. Screening of the premises on the street or adjacent properties by walls, fences or other methods.
3. Modification of the exterior features or appearance of buildings or other structures.
4. Limitations on the number of occupants, methods and hours of operations.
5. Alteration, grading and contouring of physical features the property.
6. Regulation of the design of access drives, sidewalks and other traffic features.
7. Regulation of the number, size, and lighting of signs more stringent than the requirements of this ordinance.

# ARTICLE V - ESTABLISHMENT OF ZONES

**Section 501 Types of Zones**
For the purpose of this Ordinance, the Town of Allenstown is hereby divided into the following types of use zones:

a. Open Space and Farming Zone (which includes the area encompassing Bear Brook State Park).

b. Residential zones as follows:

~ Residential Zone I being all that land served by Town water and Town sewer.

~ Residential Zone II being all that land not being served by Town water and Town sewer.

c. Business Zone

d. Industrial Zone

e. Commercial/Light Industrial Zone

f. Suncook Village Zone

**Section 502 Location of Zones**
The zones described in Section 501 are located and bounded as shown on the official zoning map, which, together with all explanatory matter thereon, is adopted and made part of this Ordinance. The zone in which the majority of buildable square footage is located.

**Section 503 Official Zoning Map**
Regardless of the existence of other printed copies of the Zoning Map, which from time to time may be made or published, the Official Zoning Map which shall be located in the Town Hall Office of the Selectmen shall be the final authority as to the current zoning status of the land and water areas, building and other structures in the Town.

**Section 504 Interpretation**
Any use which is not expressly permitted in a zone shall be deemed forbidden in the zone.

**Section 505 Prior Non-Conforming Uses**
Prior lawful building and uses, which are rendered non-conforming by the Ordinance or any amendment thereto, may be continued indefinitely to the extent that such buildings and uses are provided such action does not increase the degree of non-compliance, but may not be:

a. moved, enlarged, altered or extended;

b. changed, by another non-conforming use;

c. re-established if such use has been abandoned or discontinued for a period of one (1) year or has been changed to, or replaced by, a conforming use; or

d. restored to other than a non-conforming use after damage from any cause, unless the non-conforming use is substantially re-instated within two (2) years.

**Section 506 Prohibited Subdivisions**

No subdivision shall be permitted in any zone unless all road frontage used to comply with the frontage and dimensional requirements for that zone is on a class V or better public way.

**Section 507 Non-Conforming Lots**

A. A non-conforming lot is any lot of record in the Registry of Deeds in a zone that it fails to meet the dimensional requirements for that zone for road frontage or lot size.

B. Non-conforming lots in the residential and the open space and farm zones may obtain a building permit without a variance so long as they meet all other requirements for the zone including all setbacks.

C. A non-conforming lot or lots in any zone which are adjoining and have the same owner of record shall be required to eliminate the non-conformity to the maximum extent possible.

D. Nothing in this section shall relieve any owner of the need to comply with the site plan review of any other requirements of a zone.

# ARTICLE VI - OPEN SPACE AND FARMING

**Section 601 Uses**

In an Open Space and Farming Zone, land may be used and buildings may be erected for or used for:

a. Single-family dwellings, provided that no such dwelling shall be located on a lot with less than two hundred (200) feet of frontage along one street with a minimum of five (5) acres in size. Two family dwellings may also be permitted on lots with two hundred (200) feet of frontage along one (1) street with a minimum of ten (10) acres in size.

b. General purpose farm, forestry, agriculture or nurseries, or the selling of produce provided such uses are located and conducted in a manner not injurious, offensive and/or obnoxious to the general neighborhood and traffic.

c. Municipal Recreation (Outdoor)

e. Golf courses

f. Family child care home

**Section 602 Special Exceptions and Conditional Uses**

I. Exceptions. In an Open Space and Farming Zone, the following exception may be permitted upon approval of the Board of Adjustment, subject to such conditions as may be imposed by the Board of Adjustment:

a. Motels, hotels or lodging houses

b. Campgrounds or overnight camps

c. Airports

d. Cemeteries

e. Governmental Uses

f. Removal of fill, gravel, stone or loam from the premises

g. Warehouses

h. Carports that would encroach on setback requirements

i. Telecommunication Towers

j. Senior Housing

k. Private Recreation (Outdoor)

l. Commercial Stable

m. Assisted Living Facility

n. Cluster Housing – for cluster residential development or residential development in a clustered concept, subject to dimensional and density requirements less than the minimum normally required in the particular district, the following conditions shall apply:

1. The tract shall be at least fifteen (15) acres in size having frontage of two hundred (200) feet along one street and subject to approval by the Planning Board. There shall be no more than one dwelling unit permitted for every five (5) acres of lot size. No structure shall be closer than 200' to any town road or property line of the parent tract.

2. If developed strictly for one-family detached residences, the following conditions shall apply:

    a. Each individual lot shall be subject to the yard requirements for one-family detached dwellings in the residential zone with water and sewer;

    b. The total number of proposed lots in the development shall not exceed the number of lots, which could be developed under normal application requirements. For purposes of this section, it shall be assumed that a maximum of 80% of the total tract area could be utilized to meet lot area requirements;

    c. The development shall be served by an adequate water system and by either the Town sewerage system or community system approved by the State Water Supply and Pollution Control Board;

    d. At least 20% of the total tract area (of which 50% shall not be wetlands or over 5% slopeland) shall be set aside as common land and covenanted to be maintained as permanent open space in private or cooperative non-profit ownership;

    e. Such common land shall be permanently covenanted simultaneously with the Planning Board approval of the final subdivision plan;

    f. Such common land shall be restricted to open space recreational uses such as a park, playground, playfield, golf course, or conservation area and have suitable access to a street.

3. If developed for one family attached and/or multi-family residences, the following shall apply:

    a. Each individual lot shall have a minimum of 20,000 square feet plus 8,000 square feet for each dwelling unit;

b. The total land requirements for each building shall be 80,000 square feet plus 8,000 for each dwelling unit.

c. The development shall be served by an adequate water system and by either the Town sewerage system or community system approved by the State Water Supply and Pollution Control Board.

d. At least 20% of the total tract area (of which 50% shall not be wetlands or over 5% slopeland) shall be set aside as common land and shall be covenanted to be maintained as permanent open space in private or cooperative non-profit ownership;

e. Such common land shall be permanently covenanted simultaneously with the Planning Board's approval of the final subdivision plan;

f. Such common land shall be restricted to open space recreational uses such as tot lot, park, playground, playfield, golf course or conservation area and have suitable access to a street.

g. Buildings shall not exceed thirty (30) feet in height.

o. Group Child Care Home

p. Retail Sales, Unobtrusive to the neighborhood.

II. Conditional Uses. In an Open Space and Farming Zone, the following may be permitted upon the Planning Board granting a Conditional Use Permit:

a. Manufactured Housing Parks. Parcel must also be located entirely within the Manufactured Housing Park Overlay District.

**Section 603 Repealed 3/98**

**Section 604 Dimensional Restrictions**

No structure **shall be closer than** *twenty (20) feet from any street* and *thirty (30) feet from any rear or side lot line.*

a. A swimming pool may be installed not closer than fifteen (15) feet from the rear lot line.

b. A garage accessory to a one or two-family need not be set back more than ten (10) feet from the rear lot line; and

c. A maximum of One (1) utility shed or greenhouse not larger than two hundred (200) square feet of floor area with a height not greater than seven (7) feet to the eaves and ten (10) feet from the floor to the ridge, need not be set back more than five (5) foot from any side or rear lot line and be no closer than six (6) feet from any residence.

d. The driveway shall be located on the portion of the property which has road frontage conforming with the dimension and requirements for frontage in this zone. In the case of non-conforming buildable lots the driveway shall be located on the portion of the property which has the most road frontage conforming with the dimensional requirements of this zone. *Effective March 13, 2007*

# ARTICLE VII - RESIDENTIAL ZONE

**Section 701 Uses**

In a Residential Zone, land may be used and buildings may be erected or used for:

a. Single-family dwellings

b. Community Center

c. Family Child Care Home

d. Senior Housing

e. Municipal Recreation (Outdoor)

f. Private Recreation (Outdoor)

g. Gardens when incidental to primary residential use by excluding any use injurious, noxious or offensive to the neighborhood

**Section 702 Exceptions**

In a Residential Zone, the following may be permitted upon approval of the Board of Adjustment, subject to such conditions as may be imposed by the Board of Adjustment:

a. Municipal uses
b. Public utility uses necessary for public welfare
c. Funeral parlors
d. Professional offices
e. Two-family dwellings
f. Carports that would encroach on setback requirements
g. Group child care center (more than 6 children)
h. Kindergartens
i. Multi-family dwelling
j. Home Occupation
k. Assisted Living Facility
l. Adult Daycare
m. Personal Service less than 5,000 Square Feet
n. Sit-Down/Take out restaurant less than 5,000 Square Feet (no drive in)

**Section 703 Dimensional Restrictions**

The following restrictions apply in a Residential Zone:

a. No structure shall exceed two (2) stories or thirty (30) feet in height from the ground to the highest point on no less than three sides of the structure exclusive of accessory chimneys or accessory antennas.

b. No structure **shall be closer than** *twenty (20) feet from any street*, or *closer than thirty (30) feet from any rear lot line* or *closer than fifteen (15) feet from any side lot line*, except that:

1. A swimming pool can be installed not closer than fifteen (15) feet from the rear lot line;

2. A garage accessory to a one or two-family dwelling need not be set back more than ten (10) feet from the rear lot line; and

c. One utility shed or greenhouse not larger than one hundred forty-four (144) square feet of floor area with a height not greater than seven (7) feet to the eaves and ten (10) feet from the floor to the ridge need not be set back more than one (1) foot from any side lot line or rear lot line and be no closer than six (6) feet from any residence.

d. When Town water and sanitary sewers are available, no lot shall have less than one hundred (100) feet of frontage on any one accepted street, nor an area of less than ten thousand (10,000) square feet.

e. When Town water or sanitary sewers are **not** available, no lot shall have less than two hundred (200) feet of frontage along any one accepted street, nor an area of less than forty thousand (40,000) square feet.

f. No more than forty (40%) percent of the area of any lot may be covered by buildings or structures.

g. All two (2) family dwellings, apartment houses, and multifamily dwellings having Town water and sewer available shall have at least ten thousand (10,000) square feet of lot size for each dwelling unit. All two (2) family dwellings, apartment houses and multifamily dwellings not having Town water and sewer available shall have at least forty thousand (40,000) square feet of lot size for each dwelling unit.

h. With the exception of lots described under Section 1113.4 of this Ordinance, driveways shall be located on the portion of the property which has road frontage conforming with the dimensional requirements for frontage in this zone. In the case of non-conforming buildable lots the driveway shall be located on the portion of the property which has the most road frontage conforming with the dimensional requirements of this zone. *Effective March 13, 2007*

**Section 704 Uses Not Permitted**

a. The keeping of livestock is not permitted on any lot in the Residential Zone.

b. No small engine repair, motor vehicle repair, or any other form of engine repair service or business shall be permitted on any lot in the residential zone as a home occupation or otherwise.

# ARTICLE VIII - BUSINESS ZONE

**Section 801 Uses**

In a Business Zone, land may be used and buildings may be erected or used for:

a. Any purpose permitted in a Residential Zone under Section 701, b. and c.
b. Churches
c. Hospitals
d. Municipal Uses
e. Funeral parlors
f. Filling stations and motor vehicle repair garages
g. Garden nursery/Commercial greenhouse
h. Museums
i. Lodging houses, hotels or motels
j. Clubs, private or public
k. Newspaper or job printing plants
l. Professional Offices
m. Banks
n. Restaurants
o. Adult Daycare
p. Assisted Living
q. Municipal Recreation (Indoor or Outdoor)
r. Private Recreation (Indoor or Outdoor)
s. Office Park
t. Car Wash
u. Personal Service, any size
v. Marine Sales/Service
w. Public Utility.
x. Retail Sale of goods
y. Retail Landscape Supply
z. Consumable Manufactured Goods
aa. Kindergarten
bb. Group child care center (more than 6 children)

**Section 802 Exceptions**

a. Telecommunications Towers
b. Carports
c. Manufacturing
d. Motor vehicle Sales
e. Veterinary Office/Hospital
f. Motor vehicle Rental
g. Multimodal Transportation Hub/Facility

**Section 803 Uses Not Permitted**

a. In a Business Zone, no land, building, structure or premises shall be used for a coal yard, lumber yard or any other purpose injurious, noxious or offensive to the neighborhood by reason of emission or odor, fumes, dust, smoke, vibration, noise or other cause.

b. The keeping of livestock.

**Section 804 Dimensional Restrictions**

The following restrictions apply in a Business Zone:

a. No structure shall exceed three (3) stories or forty-five (45) feet in height from the ground to the highest point on any one side, exclusive of accessory chimneys or accessory antennas.

b. No structure shall be erected closer than fifteen (15) feet to any side lot line, unless a fire wall, approved by the Fire Chief, shall protect both structures facing such side lot line.

c. No structure shall be erected closer than forty (40) feet to the nearest rear lot line.

d. No structure shall be erected closer than twenty (20) feet to the front lot line.

e. No more than seventy (70%) percent of the land area of any lot may be covered by buildings or structures.

f. No lot shall have less than seventy-five (75) feet frontage on any one accepted street.

# ARTICLE IX - INDUSTRIAL ZONE

**Section 901 Uses**

In an Industrial Zone, land may be used and buildings may be erected or used for:

a. Professional Offices
b. Office Park
c. Consumable manufactured goods.
d. Restaurants
e. Filling Stations and motor vehicle repair garages.
f. Newspaper or printing plants
g. Warehouses
h. Banks
i. Guardhouse for watchman
j. Schools
k. Heavy Manufacturing
l. Timber activities/lumber yard.
m. Outdoor Flea Markets in accordance with Section 1120 of this Ordinance
n. Retail Commercial Greenhouse
o. Retail Landscape Supply
p. Lab/Research & Development/Biotechnology Research
q. Car Wash
r. Food/Beverage Processing
s. Building/Contractor Yard
t. Veterinary Office/Hospital
u. Personal Services of any size
v. Marine Sales/ServiceIndoor/Outdoor Flea Market
w. Household Waste Recycling Facility (including collection facilities)

**Section 902 Exceptions**

In an Industrial Zone, uses consistent with the character of the Zone including, but not limited to, retail sales, may be permitted upon approval by the Board of Adjustment, subject to such conditions as may be imposed by the Board of Adjustment.

**Section 903 Uses Not Permitted**

In an Industrial Zone, no land, building, structure or premises shall be used for a coal yard, or for any other purpose injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause.

**Section 904 Dimensional Restrictions**

The following restrictions apply in an Industrial Zone:

a. No structure shall exceed three (3) stories or forty-five (45) feet in height from the ground to the highest point on any one side, exclusive of accessory chimneys or accessory antennas.

b. No structure shall be *erected closer than fifteen (15) feet to any side lot line*, unless a fire wall, approved by the Fire Chief, shall protect both structures facing such side lot line.

c. No structure shall be erected *closer than forty (40) feet to the rear lot line*.

d. No structure shall be erected closer than twenty (20) feet to the front lot line.

e. When parking is provided other than in front of the building, a setback from the sidewalk line of not less than five (5) feet shall be required. When parking is provided in front of a building, a setback from the sidewalk line of not less than twenty (20) feet shall be required.

f. No more than seventy (70%) percent of the land area of any lot may be covered by buildings or structures.

g. No lot shall have *less than seventy-five (75) feet frontage on any one accepted street.*

h. Keeping of livestock may be permitted by the Zoning Board of Adjustment by special exception upon the applicant meeting the following conditions:

i Livestock shall be housed in an appropriate structure.

ii Livestock shall not be kept closer than 250' to any abutting residence.

iii Livestock shall not be kept closer than 200' from any abutting property line.

iv All livestock housing shall be erected prior to allowing animals to be kept on the property.

v Submission of a detailed manure management plan consistent with the Manual of Best Management Practices for Agriculture in New Hampshire.

vi The property is suitable for the keeping of livestock such as, but not limited to, grazing area, etc.

vii The keeping of livestock will not diminish surrounding property values.

viii The use shall be consistent with the character of the neighborhood.

ix The use shall not be contrary to the spirit of the zoning ordinance.

x Submission of a surface water run off plan which shall include, but is not limited to, the impact of run off from the livestock operations on surface water, groundwater, abutting properties and municipal sewers. The use shall not adversely impact surface water or groundwater, abutting properties or municipal sewers.

xi Implementation of appropriate measures to mitigate odor, noise and vectors and shall provide an appropriate visual buffer.

xii The use shall not otherwise adversely affect the environment, public health or safety.

# ARTICLE X - COMMERCIAL/LIGHT INDUSTRIAL ZONE

**Section 1001 Uses**

In a Commercial/Light Industrial Zone, land may be used and buildings erected or used for:

a. Hospitals
b. Municipal Uses
c. Schools
d. Filling stations and motor vehicle garages
e. Garden nursery/Commercial Greenhouse
f. Newspaper or job printing plants
g. Professional Offices
h. Banks
i. Public Recreation (Indoor or Outdoor)
j. Restaurants
k. Retail Sales of goods
l. Lumber Yards/Timber Operations
m. Retail Landscape Supply
n. Warehouses/self storage units
o. Food/Beverage processing
p. Building/Contractor Yard
q. Veterinary Office/Hospital
r. Personal Service of any size
s. Marine Sales/Service
t. Adult Daycare
u. Office Park
v. Lab/Research and Development/Biotechnology Research
w. Auto Sales
x. Car Wash
y. Outdoor Flea Markets in accordance with Section 1120 of this Ordinance
z. Large Animal/Equine/Livestock Veterinary Facility
aa. Consumable Manufacturing

**Section 1002 Exceptions**

a. Telecommunications Towers

**Section 1003 Uses Not Permitted**

In a Commercial/Light Industrial Zone, no land, building, structure, or premises shall be used for a coal yard, or for any other purpose injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause.

**Section 1004 Dimensional Restrictions**

The following restrictions apply in a Commercial/Industrial Zone:

a. No structure shall exceed three (3) stories or forty-five (45) feet in height from the ground to the highest point on any one side, exclusive of accessory chimneys or accessory antennas.

b. No structure shall be erected *closer than fifteen (15) feet to any side lot line*, such side lot line unless a fire wall, approved by the Fire Chief, shall protect both structures facing such side lot line.

c. No structure shall be *erected closer than forty (40) feet to the nearest rear lot line*.

d. When parking is provided other than in front of the building, a setback from the sidewalk line of not less than five (5) feet shall be required. When parking is provided in front of a building, a setback from the sidewalk line of not less than twenty (20) feet shall be required.

e. No more than seventy (70%) percent of the land area of any lot in the zone may be covered by buildings or structures.

f. No lot shall have less than seventy-five (75) feet frontage on any one accepted street.

g. Keeping of livestock may be permitted by the Zoning Board of Adjustment by special exception upon the applicant meeting the following conditions:

i Livestock shall be housed in an appropriate structure.

ii Livestock shall not be kept closer than 250' to any abutting residence.

iii Livestock shall not be kept closer than 200' from any abutting property line.

iv All livestock housing shall be erected prior to allowing animals to be kept on the property.

v Submission of a detailed manure management plan consistent with the Manual of Best Management Practices for Agriculture in New Hampshire.

vi The property is suitable for the keeping of livestock such as, but not limited to, grazing area, etc.

vii The keeping of livestock will not diminish surrounding property values.

viii The use shall be consistent with the character of the neighborhood.

ix The use shall not be contrary to the spirit of the zoning ordinance.

x Submission of a surface water run off plan which shall include, but is not limited to, the impact of run off from the livestock operations on surface water, groundwater, abutting properties and municipal sewers. The use shall not adversely impact surface water or groundwater, abutting properties or municipal sewers.

xi Implementation of appropriate measures to mitigate odor, noise and vectors and shall provide an appropriate visual buffer.

xii The use shall not otherwise adversely affect the environment, public health or safety.

# ARTICLE XI - SUPPLEMENTAL REGULATIONS

Nothing in this Article shall relieve a property owner/applicant from complying with any other applicable provisions of the Allenstown Zoning Ordinance, including the provisions of any overlay districts or supplemental regulations or ordinances. In the event there are any conflicts between this Article and any other provisions of the Allenstown Zoning Ordinance, the more restrictive requirement shall control, with the exception of any applicable overlay districts at which time the provisions of the applicable overlay district(s) shall control.

**Section 1101 Accessory Uses**
Nothing herein shall be construed to forbid an accessory use which is customary and incidental to the dominant use is permitted under this Ordinance, and if such accessory use is not injurious or detrimental to the neighborhood.

**Section 1102 Accessory and Home Occupation**
Nothing herein shall be construed to prevent a physician, surgeon, dentist, musician or a member of another recognized profession from conducting a business in his residence or in an adjoining accessory building, nor shall this Ordinance be construed to prevent the carrying out in a residence of a customary home occupation, including dressmaking or music instruction, provided that such business or occupation shall not be injurious, noxious or objectionable to the general neighborhood.

**Section 1103 Proposed Streets**
After a line of a future street is placed on the official map of the Town, buildings shall be set back from such line as though it were a street line.

**Section 1104 Surface Waters**
All setbacks from surface waters shall be consistent with RSA 483-B, as amended. Any surface waters not governed by RSA 483-B shall have no structures constructed within forty (40) feet of the high water mark.

**Section 1105 Obstructions**
No wall, fence or other structure, vehicle(s) including, but not limited to cars, trucks, boats and campers, signage, trees, shrubs or other growth on the property shall obstruct the view as to cause danger to traffic on a public way. No fence shall exceed eight (8) feet in height in any zone. Fences shall be constructed with materials approved by the Building Inspector. No plastic (construction) or other construction fencing shall be permitted as permanent fencing.

**Section 1106 Casual Sales**
Casual sales, such as garage sales, yard sales and tag sales, when otherwise prohibited by the ordinance, may be authorized by the selectmen for Saturdays, Sundays and legal Monday holidays on such terms and conditions as they may impose in order to ensure that such yard sales, tag sales and flea markets are not detrimental or injurious to the neighborhood. No person or premises shall be granted permission to conduct such sale on more than one (1) weekend per calendar month and no person shall be granted permission to conduct sales before 7 a.m. or after 7 p.m.

**Section 1107 Junk**
No land shall be used for the storage or accumulation of junk as defined in RSA 236:1123 (I), as amended.

**Section 1108 Exception to Height Limitations**
Exception to the provision of this Ordinance, regarding the maximum height or number of stories of a structure, may be permitted upon approval of the Board of Adjustment subject to such conditions as may be imposed by the Board of Adjustment.

**Section 1109 Restriction Governing Motel Uses**
The following additional restrictions shall govern motel uses:

a. The minimum land area shall be 3 acres.

b. The minimum lot frontage shall be 300 feet and the minimum lot depth shall be 200 feet.

c. No structure shall be closer than 50 feet to any lot line.

d. A space not less than 20 feet wide, grassed or shrubbed or otherwise prohibited for parking, shall be maintained along each lot line except at the point where a driveway intersects a street.

e. The maximum percentage of the land area of each lot which may be occupied by buildings shall be 25%.

f. Each motel shall consist of not more than 20 units per acre of land area.

g. Each motel unit shall have one paved parking space adjoining its entrance.

**Section 1110 Apartment Houses and One-Family Attached**
The following additional restrictions shall govern apartment houses:

a. No building shall include more than eight (8) dwelling units.

b. No portion of any dwelling unit shall be located below ground level.

c. No building shall be within forty (40) feet of any property or street line.

d. There shall be a total of not less than ten thousand (10,000) square feet of lot area per dwelling unit.

**Section 1111 Signs**
Where a business, industrial or other commercial use is otherwise permitted, one outdoor sign shall be permitted for each such establishment occupying the premises, advertising the name of and/or the goods and services offered by that establishment. The total square footage of the signs for any premises are not to exceed thirty-two (32) square feet. Special exception to the provision restricting signs to a maximum of thirty-two (32) square feet and the number of signs may be permitted upon

approval of the Board of Adjustment subject to such conditions that the Board of Adjustment may impose.

An approved location of a home occupation located in the Residential or Open Space and Farms Zone, may display a sign no more than 1 foot by 2 foot or any dimension totaling 2 square feet. The sign is required to be consistent with the character of the neighborhood.

**Section 1112 Parking Requirements**

a. Each dwelling shall have at least one (1) parking space on the same lot therewith or on land adjacent thereto for each dwelling unit.

b. Each hotel, motel or lodging house shall have at least one (1) paved all-weather parking space on the lot therewith or on land adjacent thereto for each lodging unit.

c. Each place of public assembly shall have at least one (1) paved all-weather parking space on the same lot therewith, on land adjacent thereto, to within three hundred (300) feet of the entrance thereof, for each five (5) available seating spaces and for each eight hundred (800) square feet of floor area in public use, except that schools through the tenth grade shall have at least one such parking space for each twenty (20) seating spaces for each three thousand, two hundred (3,200) square feet of floor area in public use.

d. Each retail store or office building shall have at least one (1) paved all-weather parking space on the lot therewith or on land adjacent thereto for each two hundred (200) square feet of first floor area and for each four hundred (400) square feet of floor area above the ground floor.

e. Each restaurant shall have at least one (1) paved all-weather parking space on the lot therewith or on land adjacent thereto for each fifty (50) square feet of floor space devoted to patron use.

f. Each roadside stand shall have at least seven (7) paved all-weather parking spaces on the lot therewith or on land adjacent thereto for each customer service employee.

g. All uses other than residential shall provide adequate parking space off the road or street and outside the public right-of-way for vehicles delivering, loading, unloading, or taking away goods, materials, supplies or waste in connection with the use.

h. Parking shall be provided, and traffic in connection with such parking shall be channeled, so that all vehicles entering the roadway from the parking area shall enter in a forward motion and at a right angle to the street.

i. Unless otherwise specified in this ordinance or the subparagraph or on site plan review regulation for the Allenstown Planning Board all parking spaces shall be a minimum of ten (10) feet in width and twenty (20) feet in length except the parking spaces which are located parallel to a travel isle shall be ten (10) feet in width and twenty two (22) feet in length.

**Section 1113 Lot Access**

1. There shall be no less than 500 feet between access points (i.e. driveway permit) serving a single lot of record after March, 2011. This shall apply to all new lots created after March, 2011 or undeveloped lots of record existing in March, 2011. Developed lots of record having more than one access point shall be considered existing nonconformities.

2. Shared driveways (i.e. one driveway serving two lots) are permitted by right in all zones within Allenstown for single family dwellings and duplexes. A shared driveway shall serve no more than 2 lots.

3. Commercial developments (excluding single family homes and duplexes) on parcels in all zones are permitted to and encouraged to share access and/or parking whenever feasible. Though frontage may be counted on one street, access to another street via the lot containing the shared access/parking is permissible. The adequacy of shared parking facilities shall be made on a case by case basis and shall ultimately be considered by the Planning Board during formal major and minor site plan review or by the building inspector when site plan review is not required (i.e. when only a building permit is required). When access or parking is to be provided for on an abutting or nearby lot the applicant must provide a permanent written agreement from the landowner of the nearby or abutting lot indicating that access and/or a specific number of parking spaces will be shared in perpetuity or until the land use expires or changes. Such an agreement will "run with the land" and shall not expire based upon ownership.

4. For parcels fronting on US Routes 3 and/or 28 that are undeveloped and do not have a permitted access (i.e. driveway permit, either from the State of New Hampshire or the Town of Allenstown) the Planning Board may permit access on a "backage" or "sideage" road (i.e. not on Rt 3 or 28) while counting frontage along Rt 28 or Rt 3 to meet the "frontage" requirement per the Allenstown Zoning Ordinance. The same provisions shall also apply to developed lots seeking redevelopment provided that the applicant abandons existing access onto Route 3 or 28.

5. Sideage. Proposed access/driveways on "sideage" roads must be no closer than 500' from the nearest intersection.

**Section 1114 Obnoxious Uses Barred**

Notwithstanding any other provision of this Ordinance, no use shall be permitted in any zone which is injurious, noxious, offensive or detrimental to the neighborhood or to the public by reason of the emission of odor, fumes, dust, smoke, vibration, or noise, or because of pollution of groundwater or surface water, or for any other deleterious reason.

**Section 1115 Waste Disposal Sites**

No trash or garbage dump, sanitary landfill, or hazardous waste disposal facility shall be located in any zone, except such municipal or governmental uses as are immune from this Zoning Ordinance under State law, and then only to the extent required by the State law.

**Section 1116 Regulations**

Only one (1) residential building, together with such buildings which are customarily accessory thereto, shall be located on each lot.

**Section 1117 Hazardous Uses Barred**

The storage, treatment or disposal of nuclear, chemical or hazardous waste as defined in RSA 147-A: 2 VII shall not be permitted in any Zone in the Town of Allenstown.

**Section 1118 Uses Not Permitted**

a. No more than one (1) unregistered, inoperable or uninspectable motor vehicle shall be allowed in a residential zone.

b. No more than two (2) unregistered, inoperable or uninspectable motor vehicles shall be allowed on any lot in any other zone unless housed in a building or unless the lot is currently in use as a licensed motor vehicle dealership.

c. No person shall utilize a foundation as a dwelling or business.

**Section 1119 Town Building Code Regulations**

a. Above-ground pools must have retractable steps or other safeguards so as not to permit small children to the pool unattended.

b. An occupancy permit will not be issued and occupancy will not be permitted in any zone unless:

1. All necessary inspections have been performed to ensure full code compliance on electrical, water, sewer, furnace and construction.

2. The exterior of the building has been substantially completed, including all doors, windows, trim and commonly recognized permanent roofing and siding materials.

3. The exterior portions of all buildings in any zone shall be substantially completed within one (1) year from the start of construction, including all doors, windows, trim and commonly recognized permanent roof and siding materials. The time for completion of the exterior may be extended for up to one additional year by the Building Inspector for just cause.

c. Junk or unusable tires, as defined in RSA 266:49, shall not be stored on any lot in any zone in Allenstown, except that a licensed motor vehicle dealership or repair facility may store no more than forty (40) junk or unusable tires.

d. No more than four (4) used tires shall be stored on any lot in any zone in Allenstown except at a licensed motor vehicle dealership or repair facility.

e. Prior to a certificate of occupancy being issued for new construction, manufactured homes or any business, numbers not less than three (3) inches in height shall be clearly displayed and visible from the street identifying the structure' numerical address.

f. Excavations for proposed future construction may not be left open so as to create a safety hazard. Excavations for projects under construction must be safeguarded when the site is unattended.

g. No owner or occupant of land in any zone shall permit fire or other ruins to be left on a site. The owner or occupant shall remove such ruins and fill or cap any excavation within six months. Replacement of the structure shall occur within one year of the fire or the use will be considered abandoned.

h. No driveway shall be permitted or constructed in any zone which has a slope of fifteen degrees or greater. No building or house shall be permitted or constructed in any zone on a slope of twenty-five degrees or greater.

**Section 1120 Outdoor Flea Markets**

Outdoor flea markets in Allenstown proposing more than 2 such events between April 15 and October 15 of the same year must obtain a Conditional Use Permit (CUP) from the Allenstown Planning Board. Fees for the Conditional Use Permit application will be as set by the Board of Selectmen. Outdoor flea markets that will occur 2 times or less between April 15 and October 15 of the same year shall not require a permit provided they are in operation between April 15th and October 15th of the same year, are limited to weekend days and operation is limited between 7:00 AM and 7:00 PM. The Planning Board shall issue a CUP for an outdoor flea market if all of the following have, in the opinion of the board, been met:

a. Flea Market dates are limited to Saturdays, Sundays and legal Monday Holidays;
b. Is limited between the hours of 7:00 AM and 7:00 PM;
c. Does not take place before April 15th or after October 15th ;
d. Said CUP shall not be in effect until April 15th of the year of issuance and shall expire October 16th of that same year;
e. Sufficient "off street" parking shall be provided for by the proprietor/manager of the outdoor flea market;
f. Refuse collection and removal shall be provided;
g. Shall not be detrimental to the neighborhood or abutting properties;
h. The outdoor flea market shall comply with any other applicable provisions of this Ordinance.

**Section 1120 Accessory Agricultural Uses**

The Town of Allenstown recognizes that, in addition to the provisions spelled out in the Agricultural Conservation District, there is a need to specify provisions for small-scale Accessory Agricultural Uses associated with residential use. Accessory Agricultural Uses, as defined in the Definition portion of this Ordinance, are, unless otherwise stipulated in this Section, permitted in all parts of town where the Use complies with the following provisions:

a. Accessory Agricultural Uses are permitted on lots that meet all of the following conditions:
   i. The subject property is one quarter (.25) acre or greater.
   ii. The subject property is owner-occupied.

iii. The use of the property is solely residential or a legally-operating home occupation.
iv. The majority of the food and/or agricultural products produced on the property are consumed by the residents of the Home.

b. Requirements for specific Accessory Agricultural Uses:

i. The keeping of chickens must comply with all of the following:

1. Chickens must be contained and stay entirely on the subject parcel – they may not roam onto abutting lots and streets.

2. The keeping of 17 or more chickens shall result in site plan review and compliance with the requirements of the Agricultural Conservation District.

3. The keeping of one or more roosters is only permitted in the Open Space and Farming Zone (OSF).

4. Chickens kept on one and a half (1.5) acres or less shall be in an enclosure that provides a minimum of two and a half (2.5) square feet for each bird kept.

ii. The keeping of gardens for the purpose of providing food/agricultural products for the residents of the Home shall not be bound by the provisions of this Section. This does not preclude gardens from the provisions of the Agricultural Conservation District or any other relevant portions of the Allenstown Zoning Ordinance, when applicable.

# ARTICLE XII - FLOODPLAIN DEVELOPMENT REGULATIONS

## 1 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.

## 2. 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.

I. 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.

II. 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. The building inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

C. The building inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies form 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.

D. 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).

III. 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).

IV. 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 Allenstown.

**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 issues, 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.

V. 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.

VI. 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.

VII. 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.

## VIII. 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.

IX. 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.

12. 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.

**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.

4. 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.

5. 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."

**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.

## X. 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.

## ARTICLE XIII - ENFORCEMENT

**Section 1301 –** "In addition to any other remedies authorized by law, in case any building or structure is erected, reconstructed, altered, repaired, converted or maintained or any building structure or land is used in violation of this zoning ordinance, the owner or owners of the building, structure or land, or any other person violating the provisions of this zoning ordinance may be subject to the fines or penalties prescribed in the maximum amount permitted by RSA 676:17 for each and every day that such violation continues or occurs. *Effective March 13, 2007*

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### ARTICLE XIV - AMENDMENTS

**Section 1401** – This Ordinance or any part thereof, may be amended from time to time in accordance with the procedures prescribed by the laws of the State of New Hampshire.

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### ARTICLE XV - SEPARABILITY

**Section 1501 –** The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

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## ARTICLE XVI - DATE OF EFFECTIVENESS

**Section 1601 –** This Ordinance shall become effective on the date of its adoption.

# ARTICLE XVII - PRESITE BUILT HOUSING AND MANUFACTURED HOUSING

**1701 Purpose**

A significant portion of Allenstown's housing stock is made of up of manufactured and presite built homes. Adopted under the authority of RSA 674:32 and RSA 674:21, as amended, the intent of this ordinance is to:

a. Ensure a balance of housing types within Allenstown;

b. Meet the housing needs of a variety of Allenstown residents, as part of the larger housing strategy outlined in the Allenstown Master Plan; and,

c. To provide reasonable and realistic opportunity for a variety of housing types in Allenstown.

**1702 Overall Requirements**

a. Applicability: All Presite Built Housing and Manufactured Housing as defined in Article II, Definitions, shall be controlled by this Article. Any conflict between the provisions of this Article and any other portion of this Ordinance shall result in the more stringent provision controlling.

b. Presite Built Housing and Manufactured Housing:

1. Presite Built Housing to be located on a permanent foundation (cellar or poured slab) shall be controlled by the provisions of the underlying zoning districts within the Allenstown Zoning Ordinance and all applicable provisions of Federal and/or State law and the Allenstown Building Code.

2. Manufactured Homes shall be governed by the provisions of this Article and any other relevant sections within the Allenstown Zoning Ordinance and all applicable provisions of Federal and/or State law and the Allenstown Building Code.

3. A single presite built home or single manufactured home is permitted on a single lot of record wherever single family homes are permitted in Allenstown.

4. Unless part of a cluster development or manufactured housing park, the placement of more than one presite built home or one manufactured home on one lot is prohibited.

5. Clusters of presite built homes on a permanent foundation (cellar or slab) shall be governed by the cluster housing requirements in Article VI, Section 602.m within the Town of Allenstown Zoning Ordinance and are permitted by Special Exception in the Open Space and Farming Zone only.

6. Manufactured homes within manufactured home parks shall be governed by the provisions of this Article and are permitted in the Open Space and Farming Zone solely within the Manufactured Housing Park Overlay District only if a Conditional Use Permit for a manufactured home park is issued by the Planning Board. A Conditional Use Permit application, along with the site plan application components shall consist of an application for a manufactured home park. The Planning Board shall consider

Conditional Use Permit applications for manufactured home parks in concurrence with site plan applications as specified in this Article. Additional provisions:

a. The Planning Board is authorized to grant waiver requests during the Conditional Use Permit Process for park standards as well as the area standards for individual home sites, including frontage, lot shape/size, setbacks, road standards, and infrastructure requirements. Waivers need be in writing in accordance with the waiver request provisions as depicted in the Allenstown Site Plan Regulations.

b. Site Plan Approval Required: In addition to the Conditional Use Permit process, site plan approval shall be required for all manufactured home parks. All manufactured home site plans shall be processed as Major Site Plans and be subject to the provisions of the Allenstown Site Plan Regulations. All individual manufactured home sites to be included in a new park or in an expansion of an existing park shall be depicted and delineated individually on the manufactured home park site plan.

c. Conditional Use Permit Criteria: All of the following must be met, in the opinion of the Planning Board, in order for a Conditional Use Permit to be granted for the construction of a manufactured home park under the provisions of this Article:
    1. That the parcel(s) for development are located entirely within the Manufactured Housing Park Overlay District.
    2. That the property in question is in conformance with the dimensional requirements of the zone as stipulated by this Article.
    3. That the proposal meets the purposes of this Article under which the application is proposed.
    4. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Allenstown.
    5. That the proposed use will not adversely affect the ground water resources of the Town of Allenstown.
    6. That the proposed use meets all applicable provisions, including installation as well as health and safety provisions.
    7. That ownership and maintenance provisions are clearly demonstrated.
    8. That home sites are clearly delineated on the plan.
    9. The proposal will not result in a traffic safety hazard.

d. Boundaries of the Manufactured Housing Park Overlay District: The Manufactured Housing Park Overlay District boundaries shall consist of the following lots legally existing as of April 1, 2011 and as depicted on the March 10, 2015 Official Zoning Map of the Town of Allenstown, and a map created by the Central New Hampshire Regional Planning Commission entitled Allenstown Manufactured Home Park Overlay District and dated March 10, 2015. Overlay district lots include Maps and Lots: 407-12; 407-8; 407-9-1; 407-9-2; 407-26; 407-9-3; 407-25; 407-10; 407-11; 407-30; 407-31; 407-23; 407- 024; 407-32; 409-30;

409-31; 409-32-1; 409-33; 409-32; 407-34; 109-21; 109-22; 109-23; 109-24; 108-1; 108-2; 410-28; 107-1; 107-2; 410-29; 107-3; 107-4; 410-33; 107-5; 107-6; 107-7; 410-31; 410-32; 107-8; 107-9; 410-30; 411-5; 411-2; 411-3; 411-4, and any future lots created as a result of the subdivision or merger of any of these lots.

**1703 Manufactured Home Parks**

a. General Requirements: Clustering manufactured homes into manufactured home parks shall be subject to the provisions of this Section.

b. Park Minimum Lot Size: All manufactured home parks must be located on a parent tract of at least fifteen acres (15) in size or greater and two-hundred (200) feet of frontage on a town-maintained (Class V) road.

c. Density Requirements: The maximum number of units allowed in a manufactured housing park shall be determined by dividing the total acreage of the parent tract in acres by two (2) acres. The resulting "full yield" number shall represent the maximum number of manufactured homes permitted on a given parent tract (i.e. total number of homes allowed in a park). Fractions shall be rounded to the nearest whole number.
   1. The maximum number of units permitted by the full yield calculation does not exempt the development from meeting wetland, floodplain, buffers and other dimensional requirements even though it may result in a small number of permitted units allowed.

   2. The Planning Board may entertain waiver requests per section 1702.b.6.a for setback standards for wetlands and individual home lot setbacks provided that they in writing in accordance with the waiver request provisions as depicted in the Allenstown Site Plan Regulations. In no instance shall a waiver granted by the Planning Board result in the number of units that exceeds the full yield.

d. Open Space Requirement: All manufactured home parks shall provide not less than twenty percent (20%) of the total land area for park open space purposes and such lands shall be improved whereby the same will be accessible to all families residing within the park.

e. Parent Tract Setback: No structure shall be closer than 200' to any town road or property line of the parent tract of the park.

f. Secondary Access: Each park must also provide at a minimum, a secondary access way.

g. Wetland Setbacks: All manufactured home park development, for both new parks and parks seeking to expand, shall not include construction or placement of units within the wetland setbacks established and described in Article, XXV, Permenant (Post-Construction) Stormwater Management Ordinance of the Allenstown Zoning Ordinance.

h. Individual Home Site Requirements: The following shall be observed by all individual home sites within a manufactured home park unless waived per section 1702.b.6.a:

1. Area Requirements: Layout of individual home sites, as depicted on the site plan, shall be reasonably symmetrical; "flag lots" or "pork chop lots" as described in the Allenstown Subdivision Regulations are prohibited. Existing home sites need not be reconfigured, though if they are reconfigured will need to comply with these layout standards.

2. No structure located on any individual home site in any manufactured housing park shall be closer than twenty feet (20) to the front home site line.

3. No structure located on any individual home site shall be closer than twenty feet (20) to any rear or side home site line.

4. All home sites in a manufactured home park shall be well drained and graded to a point where the manufactured home may be parked so that the parking of the same shall result in safety to all concerned. In all instances as much natural growth as is reasonably possible shall be preserved by any manufactured home park developer.

5. A paved or crushed stone parking apron, at least twenty two feet (22) wide and twenty two feet (22) deep large enough for two vehicles shall be provided. The pad for the siting of the manufactured home unit shall extend at least one foot beyond the outside dimensions of any manufactured home parked thereon.

6. No individual home site shall have direct access or a driveway onto a public street of the Town of Allenstown.

7. All individual home sites shall abut and access an internal roadway within the park with at least seventy five feet (75') of frontage. Such sites shall be clearly delineated on the ground per monumentation standards as outlined in the Allenstown Subdivision Regulations. In addition to the required monumentation, delineation may also include fencing, landscaping or other natural features.

i. Individual Site Improvements: Individual tenants of the manufactured home park may construct attached enclosures or decks to individual manufactured housing, provided that such enclosures or decking do not result in more than 20% of impervious coverage per site, and all proper permits and approvals are obtained for construction.

j. Commercial Sale of Homes: The commercial sale of new manufactured homes not for use in the park is prohibited. Uninhabited model homes for units to be sold for use in the park shall not exceed three (3) model homes per park. This Section shall not prohibit individual tenant owners from selling their own manufactured homes.

k. Replacement of Structures: The replacement of homes shall be permitted and comply with Allenstown Zoning Ordinance Article XII, Floodplain Development Regulations and all applicable provisions of Federal and/or State law and the Allenstown Building Code.

# ARTICLE XVIII - HAZARDOUS MATERIAL CLEANUP ORDINANCE

As Adopted March 17, 1990

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**Section I – Policy**

It is hereby declared to be the policy of the Town of Allenstown that all costs incurred by the Town for the control and/or containment cleanup of any release of a hazardous material shall be borne by the responsible party.

**Section II – Definitions**

The following words and/or phrases shall, for the purposes of this Ordinance, have the meanings ascribed to them herein unless the context of a particular section clearly requires otherwise.

Cleanup – The control, containment, removal or neutralization of any released hazardous material for the purpose of promoting or protecting public health and/or safety.

Hazardous Material – Any substance or material in such quantity and form which may pose an unreasonable risk to health and safety or property, which may include but is not limited to, explosives, radioactive materials, etiologic agents, biological material, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials and compressed gasses which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations and any amendment thereto.

Release – The uncontrolled, improper or unsafe release, discharge or escape of any hazardous material to any place or in any manner which poses an actual or potential threat to any person, property, wildlife or the environment.

**Section III – Notification: Cleanup**

The Allenstown Fire Department shall immediately be notified of any release or potential release of any hazardous material within the Town. At the same time, the responsible party or parties shall take all proper measures reasonably necessary and available to stop the release and clean up the affected area.

**Section IV – Cost Recovery**

1. Upon the completion of any cleanup I which municipal forces participated, all costs of the cleanup shall be itemized by each Town department involved, including the Fire Department. Such costs shall include, but are not limited to, the cost of cleaning, repair, restoration or replacement of any Town material or Town employee who participated in the cleanup and the costs of all contracted services utilized in the cleanup.

2. Upon receipt of these itemizations, including its own, but in no event later than 60 sixty days from the day of the release, the Fire Department shall bill the full cost of the cleanup to the responsible party or parties. The bill shall include a description of the costs incurred. Bills for less than the full amount of these costs shall be allowed provided that the responsible party is advised of the reason therefore and the approximate date by which it can expect to receive a complete bill.

3. Each responsible party shall be jointly and severally liable to the Town for the costs of the cleanup for which they are responsible. Such costs may be collected by any lawful means including, but not limited to, appropriate court proceedings. All funds received from responsible parties shall be forwarded to the Town Treasurer for deposit in the Hazardous Materials Fund.

4. Any and all costs recovered from a responsible party shall be separate from and in addition to any penalty that may be assessed for any violation of any provision of this Ordinance.

**Section V – Severability**

Should any provision of this ordinance be held invalid by a court of competent jurisdiction, such finding of partial invalidity shall not affect the remainder of this Ordinance which shall be continue in full force and effect. To this end, the provisions of this Ordinance are severable.

# ARTICLE XIX - SOLID WASTE MANAGEMENT ORDINANCE

As adopted September 8, 2003

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Whereas, the Town of Allenstown has determined that in the best interest of its citizens, to provide for the disposal of solid waste through centralized solid waste, refuse-to-energy facility (waste plans): and

Whereas, the Town has entered into an Agreement for Formation of the Concord Regional Solid Waste/Resource Recovery Cooperative (COOP) for the purpose of jointly exercising with other COOP members their power and authority for the disposal of solid waste: and

Whereas, pursuant to the terms of the Service Contract between the COOP and Signal Environmental Services (SE), the COOP is required to deliver minimum quantities of Acceptable Waste (as defined herein) to the Waste Plans; and

Whereas, it is desirable and in the best interests of the public health, safety and welfare of the citizens of the Town for the Town to exercise its authority to control the collection, transportation and disposal of solid waste generated within its borders to ensure the delivery of minimum quantities of Acceptable Waste to the waste plant, and to empower the Board of Selectmen to adopt rules, regulations and fees in furtherance thereof.

Now, therefore, pursuant to the authority granted in NH RSA Chapters 149-M and 47:17 as amended, the Town adopts the following Ordinance to be know as the Town of Allenstown Solid Waste Management Ordinance (SWMO).

**Section 1 – Definitions**

**Acceptable waste** – for the purposes of the SWMO means a) household garbage, trash, rubbish and refuse, originating within the boundaries of the Town, normally collected and disposed of, as a result of residential pickups or deliveries; and b) such types of agricultural, commercial and industrial waste originating within the boundaries of the Town as are normally collected or disposed of, but excluding hazardous waste, unacceptable waste and other solid waste.

**Commercia**l – for the purposes of the SWMO, means commercial entities doing business in the Town of Allenstown, including but not limited to, contractors, multi-family dwellings and/or manufactured housing parks of more than three units per parcel, respectively and commercial establishments of any size such as, residential boarding and lodging homes, convalescent and nursing homes, churches, schools, ski areas, motels, inns, restaurants, lounges, retail sales, service businesses, professional offices, manufacturing or automotive related businesses.

**Facility** – means the transfer station or other sites or areas designated by the Board of Selectmen within or outside the borders of the Town for the delivery or disposal of solid waste collected within the borders of the Town.

**Hazardous Waste** – means a) waste containing explosive, toxic or pathological substances; b) waste defined or classified as hazardous waste at any time under federal, state or local law, or any regulation hereunder, or waste defined by any applicable federal, state or local law as low level radioactive waste; c) waste prohibited for incineration by any local, state or federal agency because of its toxic nature; d) waste the processing of which would result in hazardous waste under a, b or, c of this definition or e) containers which hold or which previously held waste described under a, b, or c above. If any governmental entity having jurisdiction shall determine that any substances which are not, as of the date of this Ordinance, considered harmful or of a toxic nature or dangerous, are harmful, toxic or dangerous, such substances shall thereafter be deemed hazardous waste.

**Other Solid Waste** – means residential white metal goods, household appliances, tires, street sweepings, tree stumps and residential demolition debris.

**Residential** – means all single-family dwellings and multi-family dwellings consisting of three units or less per parcel.

**Unacceptable Waste** – means waste that is unacceptable at the Waste Plant such as a) pathological and biological waste, oil, sludge, cesspool or other human waste, human remains, street sweepings, large items of machinery and equipment such as automobile and vehicular parts, tires, trailers, agricultural equipment, marine vessels, or similar items, farm and other large machinery, wire and cable from industrial sources, plastics from industrial sources in excess in total of 5% of the Town's Waste Plant waste load, foundry sands, tree stumps, liquid wastes and slurries, explosives including ammunition and firearms, radioactive materials, any item of waste exceeding 6' 6" in any one of its dimensions or being in whole or in part a solid mass, the solid portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such a solid portion; c) animal remains, dirt concrete and other non-burnable construction material and demolition debris and chemicals from industrial and commercial sources such as cleaning fluids, petroleum products, paints, acids, caustics, pesticides, insecticides, poisons, drugs or other materials the processing of which SES reasonably believes would pose a threat to the health, safety or the processing of which may cause damage to the waste plant; d) any waste which if processed would violate or cause the violation of any judicial decision, order or action of any federal, state or local government or any agency thereof or applicable law; and e) hazardous waste.

**Waste Plant** – means the Concord Regional Solid Waste/Resource Recovery Cooperative (COOP).

**Section II – Regulated Activity**

a. All acceptable waste originating or collected within the municipal boundaries of the Town shall be delivered to and deposited at the waste plant or the facility as designated by the Board of Selectmen.

b. The Board of Selectmen are empowered to explore the feasibility of constructing a joint facility with any other surrounding town if so located and costs are allocated on a percentage of use basis.

c. No person shall deliver or cause the delivery of any solid waste originating from outside the municipal boundaries of the Town to the waste plants without the prior written consent of the Board of Selectmen. No person shall deliver or cause the delivery of any unacceptable waste or hazardous waste to the facility. No person shall cause or allow solid waste

originating out the Town which is delivered to the Waste Plant by such person to be credited against the quantity of acceptable waste received or accepted at the waste plant for the account of the Town. Any person licensed by the Town of Allenstown to deliver acceptable solid waste to the plant or facility shall haul only acceptable solid waste resulting from within Town borders. No person shall deliver or cause the delivery of acceptable waste to the waste plant in any vehicle with a gross weight of less than 27,000 pounds.

d. All items defined as unacceptable waste, hazardous waste or other solid waste shall be responsibility of the owner or waste generator and shall be disposed at the owner's or generator's expense.

e. The Town shall not bear the cost for pickup or transportation of any commercial acceptable solid waste generated in the Town of Allenstown. The tipping fee for all commercial acceptable solid waste delivered to the waste plant shall be paid by the Town.

**Section III – Licensing**

a. No person shall collect, transport or deliver solid waste originating from within the Town without obtaining a license from the Board of Selectmen, except that a person that collects, transports or delivers solid waste exclusively in a vehicle or vehicles with a gross vehicle weight of less than 8,600 pounds shall not be required by this section to obtain such a license.

b. Any person required by the Ordinance to obtain a license shall make application to the Board of Selectmen providing the information required. Each application shall be accompanied by a non-refundable application fee of $25.

c. The application shall contain all information required by the Board of Selectmen including, but not limited to a description of the activities engaged in e.g. collection, transportation or delivery of acceptable waste; list of commercial customers and size and location of containers, pick up route, designated day and time of pick up, type and amount of waste handled; certificate of insurance with limits of coverage as determined by the Board of Selectmen; a description of the facilities operated and used; and an equipment inventory, including a description of the make, model and year of each vehicle used for the collection or transportation of solid waste.

d. Licenses shall be renewed annually and all information provided in the initial application shall be reviewed upon application for license renewal. If the Board of Selectmen shall determine the application is incomplete, they shall notify the applicant in writing of the specific information necessary to complete it. The Board of Selectmen shall be informed immediately in writing of any changes in or additions to the information required on the application.

e. Licenses issued hereunder shall not be transferable.

f. All licenses shall expire one year from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this Ordinance.

g. The annual license fee shall be $100 for each applicant licensed. In the event the Board of Selectmen denies a license application, they shall notify the applicant in writing and shall state the reasons for the denial. Upon such notice, the applicant may request a hearing in accordance with the procedures in Section V.

**Section IV – Suspension and Revocation**

a. Any license issued under this Ordinance may be suspended or revoked by order of the Board of Selectmen after the Board shall have notified the licensee in writing of the intent to suspend or revoke the reasons therefore and the licensee has had the opportunity for a hearing in accordance with procedures in Section V.

b. A hearing authorized by this Ordinance shall be held within 30 days after request by the Board of Selectmen of the written request for a hearing.

c. The licensee or applicant shall be notified in writing as to the time and place of the hearing at least 10 days prior to the hearing date. The applicant or licensee has the right to be represented by counsel, to offer evidence and to cross-examine witnesses.

d. A determination shall be made by the Board of Selectmen within 20 days after the conclusion of the hearing and a notice of the decision shall be served upon the applicant or licensee by certified mail, return receipt requested.

e. A final determination relative to the denial, suspension or revocation of a license and the period of suspension or revocation shall take effect as provided in the notice but no later than 10 days after the date notice of such final determination has been mailed by certified mail to the applicant. Such final determination shall be conclusive. Notice of the final determination shall set forth the reasons for the denial, suspension or revocation and the effective dates thereof, together with a statement that such decision may be appealed as provided in the Ordinance.

**Section VI – Amendment**

This Ordinance may be amended by the Board of Selectmen subsequent to a Public Hearing subject to the Town's continuing obligations under the COOP Agreement and the COOP's obligations under the Service Contract, as the same may be amended from time to time.

**Section VII – Effective Date**

This ordinance shall become effective upon adoption, provided however, that Section II shall become effective on the date to be designated by the COOP in a written notice to the Board of Selectmen certifying that the Town's obligation under the COOP Agreement to provide Acceptable Waste to the Waste Plant shall commence on such date. Notice and publication of the date on which Section II shall become effective shall be made by the Board of Selectmen at least 30 days prior to such effective date.

**Section VIII. Curbside Collection**

**A. Eligibility.**

1. The Town provides curbside collection of household solid waste (hereinafter sometimes referred to as trash or garbage) as a service to residents of the Town. In order to be eligible for this service, you must be a resident of Allenstown, live in a residential

structure on a public way and dispose of household solid waste in accordance with the rules prescribed herein. Nonresidents, businesses, commercial or industrial enterprises and residents not living on a public way are not eligible for curbside collection.

2. Residents not living on a public way are entitled to dispose of their household solid waste at the transfer station upon obtaining a residential solid waste permit.

3. Businesses, commercial or industrial enterprises and nonresidents maybe permitted to dispose of solid waste at the transfer station at the discretion of the Town and subject to such fees and regulations as the Town may impose. The Town reserves the right to prohibit disposal by businesses, commercial or industrial enterprises and/or nonresidents and require that they dispose of the solid waste at the Waste Plant.

**B. Curbside Collection Times**

1. Curbside collection normally occurs on Tuesdays and Wednesdays, except in the cases of legal holidays, severe inclement weather, unusually heavy workload or equipment difficulties or malfunction. Household solid waste not collected for any of these reasons will be collected on the next available workday.

2. Household solid waste shall not be placed at the curbside until 5:00 p.m. of the day before scheduled collection or later than 7:00 a.m. the day of collection.

3. The Town is not responsible for household solid waste until it is actually collected. In the event there is a delay in collection, residents are encouraged to take appropriate precautions to secure their trash.

**C. Rules of Collection**

1. Household solid waste shall be placed in a trashcan no larger than thirty gallons (30 gal) in size, with sturdy handles. Residents are responsible for providing and maintaining their own trash cans and bags. The Town does not sell or provide trashcans or bags for curbside collection.

2. Trashcans shall not weigh more than forty pounds (40 lbs.) When filled and shall be placed at the curbside or end of the driveway. The Highway Department will not remove trashcans or solid waste from structures or porches located near the curbside.

3. Trash cans are replaced by the Highway Department along the curbside and lids, if any are placed in the same location, but will not be replaced on the trash can.

4. The Town is not responsible for loss or damage to trash cans or lids before, during or after collection.

5. Loose household solid waste not placed in trashcans but deposited in secure trash bags which do not exceed forty pounds (40 lbs.) in weight will generally be collected so long as they comply with all other rules of collection and disposal. Cardboard boxes are not an acceptable trash receptacle. The Highway Department is not responsible for gathering, sweeping or collecting loose trash or garbage, which may

have been spilled or scattered, from trashcans or bags.

6. Animal waste from household pets including "kitty litter" maybe disposed of at curbside, provided that it is double bagged and placed in a trash can with a lid and does not exceed the forty pounds (40 lbs.) weight limit.

7. Broken glass, needles, syringes and other sharp objects shall be securely enclosed in rigid protective packaging and placed in a trashcan to prevent needle sticks and cuts to Highway Department Employees. Broken glass, needles, syringes, and other sharp objects shall not be disposed of in a trash bag unless the trash bag is placed inside a trashcan.

**D. Supplemental Services**

1. The Town may schedule seasonal special pickups as listed below for our residential curbside customers, subject to availability of our workforce and disposal facilities. These optional services are generally offered for one week only. Materials are put out on the same day as regularly scheduled rubbish pickup. Advertising in the local newspaper and postings in a number of public places within the Town notify residents-Spring cleanup of yard waste-generally limited to small brush and trimmings from lawn areas (not woodlands)

   -Spring cleanup of appliances (white goods) and residential scrap metal (bicycles, BBQ grills, etc.).

   -Fall cleanup of compostible leaves; generally limited to bagged leaves only (no brush, soil, metal, etc.).

   -Winter pickup of trees and wreaths, free of decorations and all metals.

**E. Home Occupations**

1. Curbside collection will be made from lawful "Home Occupations" located within the Residential Districts, as defined in the Zoning Ordinance, subject to the limitations contained herein. Curbside collection shall not occur from Home Occupations in any other zone.

2. Home based daycare facilities with greater than (3) three children, in addition to the children residing in the family which occupies the residence, are considered to be a <u>commercial activity</u> and <u>will not be collected.</u>

3. Diaper waste from non-commercial, home daycare facilities must be double bagged, tied, and put out in a trashcan with a lid meeting the residential requirements.

4. Solid waste from Home Occupations shall not exceed the amounts customarily generated by a single-family household. The Town shall exercise reasonable discretion in this matter, and its determination in this regard shall be final. For example, vendors and route sales people may not use Town curbside collection to dispose of packaging, advertising materials, waste product, etc.

**F. Recycling**

1. The Town is not equipped to separate or collect recyclable materials, at curbside. Residents wishing to recycle should bring their recyclables, already separated, to the Recycling Center at the Transfer Station.

**G. Prohibitions**

1. The following materials are not accepted for curbside collection:
   - Hazardous waste, in any quantity - toxic, explosive, corrosive, and highly flammable materials;
   - Motor vehicle parts, including tires, batteries and fluids;
   - Animal carcasses;
   - Construction and demolition waste;
   - Leaves, yard waste, brush, logs, and grass clippings;
   - Furniture, large appliances and scrap metals; and
   - Electronics, such as computers, radios television, etc.

   The Transfer Station, for a fee, may accept these materials.

**2.** The Town does not provide solid waste collection for businesses, commercial and industrial enterprises or nonresidents. The Transfer Station however, at the discretion of the attendant, may accept household trash, office paper, garbage; cardboard boxes crushed and tied together, grass clippings, leaves, and brush cut in 4-foot sections. Any contractor doing work in Allenstown only may take demolished material to the landfill. In order to gain access to the landfill you must have either a building permit or demolition permit from the Town of Allenstown. Absolutely no material from job sites out of Allenstown will be accepted. Any resident caught bringing in trash from another community will be subject to the fines listed below. Demolition is limited to small items. No manufactured homes, complete houses, or barns will be accepted.

**H. Penalties**

1. Penalties notwithstanding any other provision of State law or Allenstown Municipal Ordinances any violation of paragraphs A thru G of this article shall constitute a violation subject to a fine of not more than $1,000.00 for each offense. Each day of non-compliance shall constitute a separate offense.

2. Any violation of section VIII G.2 shall constitute a misdemeanor and be punishable by a fine of up $2000.00 for each violation. Each day of non-compliance shall constitute a separate offense.

**ADOPTED AND PASSED BY THE BOARD OF SELECTMEN September 8, 2003**

**EFFECTIVE DATE October 8, 2003**

Honorable Sandra McKenney, Chairperson
Honorable Benjamin Fontaine, Member
Honorable Arthur Houle, Member

# ARTICLE XX - TELECOMMUNICATION TOWERS AND ANTENNAS

**3/10/01**

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**A. Purpose and Intent**

This ordinance is enacted in order to establish general guidelines for the siting of telecommunication towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of the Town to regulate and to provide for reasonable opportunities for the siting of telecommunication facilities while ensuring that telecommunications providers service remains effective and efficient.

2. Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to, impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.

3. Providers for co-location and minimal impact siting options through an assessment of technology, current locational options, future location availability, innovative siting techniques, and siting possibilities beyond the geographical boundaries of the Town.

4. Permit the construction of new towers only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of towers and antennas to configure them in a manner that minimize visual impacts on said structures.

5. Require antenna co-location on existing tower structures through cooperation and agreements between providers.

6. Document the scheduling of recurring maintenance and safety inspections for all telecommunications facilities and appurtenances.

7. Provide for the demolition and removal of abandoned facilities. Provide a procedure for the town to remove abandoned towers to provide for the health and safety of citizens.

8. Provide for the removal or upgrade of technologically outmoded facilities.

**B. Location**

Telecommunication facilities shall be allowed in accordance with the following:

1. Permitted by special exception in all zones except residential.

2. In other areas within Town, only as a co-location on preexisting: Towers, Antennas and Alternative Tower Structures.

3. Any Town-owned property except conservation land.

**C. Definitions**

1. ***Act*** - the communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include future amendments to the communications Act of 1934.

2. ***Affiliation*** - When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest; and when used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

3. ***Alternative Tower Structure*** - Man made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers (see also ***Stealth Facility***).

4. ***Analog Technology*** - Replicates and amplifies voices messages as they are carried from the transmitting antenna to the receiving antenna.

5. ***Antenna*** - Any exterior apparatus designed for telephonic, radio or television communications through sending and/or receiving of electromagnetic waves.

6. ***Antenna Height*** - The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grade shall be used in calculation of the antenna height.

7. ***Antenna Support Structure*** - Any pole, telescoping mast, tower tripod or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

8. ***Applicant*** - A person who applies for a wireless facility siting. An applicant can be the owner of the property or someone who is representing the owner, such as the builder, developer, optional purchaser, consultant, or architect.

9. ***Broadcast*** - To transmit information over the airwaves to two or more receiving devices simultaneously. Information can be transmitted over local television or radio stations, satellite systems or wireless data communications networks.

10. ***Cell Site*** - A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s) and parking, and may include other uses associated with and ancillary to cellular communications transmission.

11. ***Cellular Service*** - A telecommunications service that permits customers to use wireless, mobile telephones to connect via low-power radio transmission sites called cell sites, either to a public switched network or to other mobile cellular phones.

12. ***Cellular Telecommunications*** - A commercial Low Power Mobile Radio Services licensed by the Federal Communications Commission (FCC) to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographical cells within a service area and which are capable of being reused in different cells within the service area.

13. ***Cellular Telecommunications Facility*** - A cellular telecommunications facility consists of the equipment and structures involved in receiving telecommunications or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

14. ***Co-location*** - Locating Wireless communications equipment from more than one provider on a single site.

15. ***Common Carrier*** - An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated prices.

16. ***Communication Tower*** - A guyed, monopole, or self supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephones, or similar forms of electronic communication.

17. ***Communications Facility*** - A land use facility supporting antennas and microwave dishes that sends and/or receives radio frequency signals. Communications facilities include structures or towers and accessory buildings.

18. ***Communications Transmission System or Communications System*** - A wired communication transmission system, open video system, or wireless communications transmission system regulated by this ordinance.

19. ***Comprehensive or Master Plan*** - The current adopted Comprehensive/Master Plan of the municipality.

20. ***C. O. W.'s*** - "Cells on Wheels", see ***Temporary Wireless Communication Facility***.

21. ***Digital Technology*** - Technology that covers voices and data messages into digital that represents sound intensities at specific points of time and data content.

22. ***Directional Antenna*** - An antenna or array of antennas designed to concentrate a radio signal in a particular area.

23. ***Dish Antenna*** - A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

24. ***ESMR*** - Enhanced Specialized Mobile Radio.

25. ***FAA*** - The Federal Aviation Administration.

26. ***FCC*** - The Federal Communications Commission.

27. ***Frequency*** - The number of cycles completed each second by a sound wave; measured in hertz (Hz).

28. ***Governing Authority*** - The Allenstown Board of Selectmen.

29. ***Grade*** - The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the structure and the property line or when the property line is more than five (5) feet from the structure, between the structure and a line five (5) feet from the structure.

30. ***Guyed Tower*** - A communication tower that is supported, in whole or in part, by guy wires and ground anchors.

31. ***Lattice Tower*** - A guyed or self supporting three or four sided, open, steel frame structure used to support telecommunications equipment.

32. ***License*** - The rights and obligations extended by the municipality to an operator to own, construct, maintain and operate its system within the boundaries of the municipality for the sole purpose of providing services to persons or areas outside the municipality.

33. ***MHZ*** - Megahertz, or 1,000,000 Hz.

34. ***Micro-cell*** - A lower power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

35. ***Microwave*** - Electromagnetic radiation with frequencies higher than 1,000 MHZ; highly directional signal used to transmit radio frequencies from point-to-point at a relatively low power level.

36. ***Microwave Antenna*** - A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.

37. ***Monopole Tower*** - A communication tower consisting of a single pole, constructed without guy wires and ground anchors.

38. ***Omnidirectional Antenna*** - An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it was designed.

39. ***Owner*** - The owner of the title to real property of the contract purchaser of real property of record, as shown on the latest assessment records in the Office of the Tax Collector. Owner also includes a deedholder or contract purchaser whose name does not appear in the latest assessment record, but who presents to the municipality a copy of a deed or contract of sale showing date of sale or potential sale.

40. ***Personal Communications Services or PCS*** - Digital wireless telephone technology such as portable phones, pagers, faxes and computers. Such mobile technology promises to allow each consumer the same telephone number wherever he or she goes. Also known as Personal Communication Network (PCN).

41. ***Preexisting Towers and Antennas*** - Any tower of antenna for which a permit has been issued prior to the effective date of these regulations and is exempt from the requirements of these regulations so long as the tower or antennas are not modified or changed.

42. ***Public Property*** - Any real property, easement, air-space, or other interest in real estate, including a street, owned by or controlled by the Town of Allenstown or any other government unit.

43. ***Roof and/or Building Mount Facility*** - A low power mobile radio service telecommunications facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or building face.

44. ***Scenic View*** - A scenic view is a view that may be framed, wide angle, or panoramic and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a far away object, such as a mountain or of a nearby object.

45. ***Self-Support Tower*** - A communication tower that is constructed without guy wires and ground anchors.

46. ***Spectrum*** - Relating to any transmissions or reception of electromagnetic waves.

47. ***Stealth Facility*** - Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match existing structure, antennas integrated into architectural elements, and antenna structures designed to look like light poles. ( See also ***Alternative Tower Structures***).

48. ***System*** - The communications transmission system operated by a service provider in the municipality.

49. ***Telecommunications*** - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

50. ***Temporary Wireless Communication Facility*** - Any tower, pole, antenna, etc., designed for the use while a permanent wireless facility is under construction, or for a special event or conference where a majority of people attending are wireless users.

51. ***Tower*** - Tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

52. ***Wireless Communication Facility*** - An all encompassing definition; any towers, poles, antennas, or other structures intended for use in connection with transmission or receipt of radio and television signals, or any other spectrum-based transmission or receipt of radio and television signals, or any other spectrum-based transmission/receptions.

53. ***Whip Antenna*** - An antenna that transmits signals in three hundred sixty (360) degrees. Whip antennas are typically cylindrical in shape and are less than six (6) inches in diameter and measure up to eighteen (18) inches in height . Also called the omnidirectional, stick or pipe antennas.

54. ***View Corridor*** - A view corridor is a three-dimensional area extending out from a viewpoint. The width of the viewpoint corridor depends on the focus of the view . The focus of the viewpoint may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include three hundred sixty (360) degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights may be limited in order to protect view.

**D. Telecommunication Facilities Procedural Requirements**

1. A scaled plan in accordance with non-residential Site Plan Regulations shall be submitted to the Planning Board including the following additional information: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fences, landscaping, adjacent land uses (up to 200 feet away), and any other information deemed necessary by the Planning Board.

2. Written proof that the proposed use/facility complies with FCC regulations on radio frequency (RF) exposure guidelines and the FAA regulations on tower lighting requirements shall be submitted to the Planning Board.

3. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National

Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA submission of the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town's site plan review process, shall become part of the application requirements. The applicants shall submit copies of any EIS or EA documents no later than ten (10) days before the submission of any such documents to FCC for final approval.

4. Each applicant for an antenna and/or tower shall provide to the Planning Board an inventory of all known existing towers that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or special exception permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

   If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence shall consist of one or more of the following:

   a. Substantial evidence that no existing towers or structures are located within the geographical area required to meet the applicant's engineering requirements, provided that a description of the geographical area required is also submitted.

   b. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.

   c. Substantial evidence that existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

   d. Substantial evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

   e. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

   f. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

5. The applicant proposing to build a new tower shall submit an agreement with the Town that allows for a maximum allowance of co-location upon the new structure. Such a statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well planned development of the Town and grounds for denial.

6. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. The cost for this review shall be borne by the applicant in accordance with NH RSA 676:4(g).

7. Each Applicant for a tower, monopole or alternative structure shall submit a design certified by a competent engineer that the structure has been engineered to accommodate the maximum number of all compatible telecommunication media antennae.

**E. Performance Standards**

The uses listed in this section are deemed to be permitted uses, subject to the requirements and restrictions of this ordinance and at the discretion of the Planning Board, may require further review under this ordinance in accordance with Site Plan Review Regulations, and all other applicable ordinances and regulations of the Town of Allenstown.

**1. Principal or Secondary Use**

Subject to this ordinance, an applicant who obtains site plan approval to site under this ordinance as a secondary and permitted use, may construct telecommunications facilities in addition to the existing principal use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure shall not preclude the installation of an antenna or tower which complies with zoning district development regulations, including, **but not limited** to area, setback, lot coverage, frontage and other dimensional requirements, the dimension of the entire lot shall control, even through the antennas or towers may be located on leased parcels with such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this ordinance, shall not be deemed the expansion of a non-conforming use or structure. Further, such facilities shall not be considered accessory use.

**2. Height Requirements**

New Tower Construction - single user 90 feet maximum.

New Tower Construction - two or more users 180 feet maximum with guaranteed co-location.

Co-location on pre-existing tower-current height plus 15% (not to exceed 180 feet).

Co-location on existing structure-current height plus 40 feet.

The height requirements and limitations outlined above shall preempt all other height regulations as required by the Zoning Ordinances, and shall apply only to telecommunications facilities. The Planning Board may waive the height limitations only if the intent of the ordinance is preserved (e.g. when it can be shown that there would be no increase in adverse impact) and the increased height would provide a greater opportunity for co-location provided that:

a. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.

b. A written narrative identifying a particular hardship or special circumstance that warrants granting the waiver is provided to the Planning Board. Factors to be considered, but not limited to, in determining a hardship or special circumstances shall include:

   i. topography and other site features;
   ii. availability of alternative site locations;
   iii. property location as it relates to required coverage area;
   iv. size/magnitude of project and availability of co-location.

c. Necessary federal approvals and/or recommendations have been received.

3. **Setbacks and Separation**

The following setbacks and separation requirements shall apply only to telecommunication facilities and shall supersede all other standards found elsewhere in the Ordinance or other applicable Town Ordinances and Regulations.

a. Towers shall be setback a distance equal to 100% of the height of the tower from any boundary line, above ground utility line, or other principal use structure located on the property the tower is sited upon. The Planning Board may, for good cause, reduce the requirements of this section no less than 50% of the tower height.

b. Tower guys and all other accessory facilities shall conform with the minimum setback requirements of the zoning district in which said facilities and appurtenances are located.

c. Towers over ninety (90) feet shall not be located within fifteen hundred (1,500) feet from any existing tower, unless located on the same lot.

4. **Security Fencing**

Towers shall be enclosed by appropriate security fencing not less than six (6) feet in height, with an adequate anti-climbing device or mechanism.

5. **Landscaping**

a. Towers shall be landscaped with a buffer of suitable vegetation that effectively screens the view of the tower compound from abutting residential property. The

minimum standard buffer shall consist of a landscaped strip ten (10) feet wide outside the perimeter of the tower compound. Existing (natural) vegetation is preferred.

b. The requirement for landscaped screening may be reduced or waived entirely by the Planning Board in locations where the visual impact of the tower compound to abutting residential uses is deemed to be minimal.

c. Existing mature tree growth and natural landforms present on the site shall be preserved to the maximum extent possible. Natural growth on the site may be deemed a sufficient buffer on large, remote, wooded lots.

6. **Aesthetics and Lighting**
The guidelines in this subsection shall govern the location of all towers and the installation of all antennas. However, the planning Board may waive these requirements only if it determines that the goals of this ordinance are served thereby.

a. Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.

b. At a tower site, the design of the building and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and previously developed environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.

c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

d. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

e. Towers shall not contain any permanent or temporary signs, writings, symbols, or any graphic representation of any kind.

**F. Federal Requirements**

All towers must meet or exceed current standards and regulation of the FAA, FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such

revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owners expense through the execution of the posted security.

8. **Building Codes-Safety Standards**
To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to person or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within thirty (30) days, such failure shall constitute an abandonment and grounds for the removal of the tower or antenna, as abandoned, at the owners expense through execution of the posted security.

9. **Certification of Safety Standards and Continued Need**
The owner of a tower or antenna shall provide an annual certification to the Zoning Compliance Officer verifying compliance with building codes and safety standards. The certification shall also verify that the structure is still needed for the operation of the owners network. Said certification shall be submitted to the Zoning Compliance Officer prior to December 31st of each year. Failure to submit an Annual Certification shall constitute abandonment and be grounds for removal.

**G. Exemptions**

1. **Government Use**
Antennas or towers owned, performed federal, state, county or town functions, or otherwise controlled by the respective governments shall be exempt from the requirements of this Telecommunications Facility Ordinance.

2. **Amateur Radio; Receive-Only Antennas**
This ordinance shall not govern any tower, or the installation of any antenna that is under seventy (70) feet in height and is owned and operated by a federally licensed amateur of citizens band station operator and/or is used exclusively for receive-only antennas. This sections adopts the provisions and limitations as referenced in NH RSA 674:16, IV.

3. **Essential Services and Public Utilities**
Henceforth, from the date of adoption of this ordinance, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the laws or ordinances and regulations. Siting for telecommunications facilities shall be considered a use of land, and is addressed by this ordinance.

**H. Bonding and Security and Insurance**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and/or unwilling to remove the tower. Bonding and surety shall be consistent with the provisions of the Site Plan Review Regulations. Furthermore,

the Planning Board shall require the submission of proof of adequate insurance covering casualty or liability.

**I. Removal of Abandoned Antennas and Towers**

Any antenna or tower that is not operated for a continuous period of twelve (12) months, or is no longer needed for the operation of the network, shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Zoning Compliance Officer notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the town may execute the security and have the tower removed. If there are two (2) or more users of a single tower, this provision shall not become effective until all users cease using the tower.

# ARTICLE XXI - IMPACT FEE ORDINANCE
**03/11/2003**

**Section 2101 Purpose**
This ordinance is enacted pursuant to RSA 674:21 in order to promote public safety, health, welfare and prosperity by:

A. Ensuring that adequate and appropriate facilities are available to individuals who come to live in or do business in the Town of Allenstown.

B. To prevent scattered or premature development of land that will involve danger or injury to health, safety or prosperity by reason of the lack of water, drainage, transportation, schools, fire protection or other public services that necessitate the excessive expenditure of public funds for the supply of such services.

C. Provide for harmonious development of the municipality and its environs.

D. Ensure the proper arrangement and coordination of streets.

E. Ensure streets are of sufficient width and condition to accommodate the use by prospective traffic.

**Section 2102 Definitions**
A. "Impact fee" means a fee or an assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by a development for the construction or improvement of capital facilities owned or operated by a municipality, including and limited to water treatment and distribution facilities; waste water treatment and disposal facilities; sanitary sewers; storm water drainage and flood control facilities; public road systems and rights of way; municipal office facilities; public school facilities; the municipalities proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.

**Section 2103 Effectiveness**
A. This ordinance shall become effective only upon the adoption by the Planning Board of a master plan and a capital improvement program.

B. Upon adoption by the Planning Board of a master plan and a capital improvement program the Planning Board is hereby authorized to assess impact fees as defined herein in accordance with requirements set forth in this ordinance.

C. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance.

**Section 2104 Impact Fee Assessment**

A. The amount of any impact fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The upgrading of existing facilities or infrastructure, the need for which is not created by new development, shall not be paid for by impact fees.

**Section 2105 Administration of Impact Fees**

A. Each paid impact fee shall be accounted for separately, shall be segregated from the Town's general fund (impact fees may be co-mingled in a single account) and be spent upon order of the governing body, it shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected to meet. All impact fees shall be assessed prior to or as a condition of, the issuance of a building permit or other appropriate permission to proceed with development. Between the date of assessment and collection, the Planning Board may require the developer to post security, in a form of a cash bond, letter of credit or a performance bond so as to guarantee future payment of assessed impact fees. Impact fees shall be collected as a condition of the issuance of a certificate of occupancy; provided however, in projects where offsite improvements are to be constructed simultaneously with the projects development, and where the Town has appropriated necessary funds to cover such portions of the work for which it is responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit. The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees. If the full impact fee assessed under this ordinance is not encumbered or otherwise legally bound to be spent for the purpose which it was collected within six (6) years, the fee shall be refunded to the assessed party with any accrued interest. Whenever the calculation of the impact fee has been predicated upon some portion of public improvement costs being borne by the Town a refund shall be made upon the failure of the town meeting to appropriate the Town's share of the capital improvement costs within six (6) years from the date of payment thereof.

B. This Ordinance shall not be deemed to effect the existing authority of the Planning Board over subdivisions and site plans including but limited to the authority to declare development premature or scattered in accordance with the regulations of the Planning Board and in accordance with RSA 674: 36, II.

# ARTICLE XXII - Agriculture Conservation District

03/08/2011

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**Section 2201 Intent and Purpose**

A. **Intent:** The Agriculture Conservation District is intended to protect areas of the community that are well suited for agriculture. It is also the intention of this ordinance to minimize conflicts between incompatible uses by redirecting non-farm uses to other districts within the community.

B. **Purpose:** The purposes of the Agriculture Conservation District are:

1. To protect, promote and encourage the continuation of farming in areas with the most suitable soils.

2. To protect and promote the continuation of farming in areas of the community that have historically contained these areas and therefore have developed compatible residential patterns and transportation infrastructure.

3. To permit primarily agricultural land uses and activities.

4. To separate agricultural land uses from potentially incompatible residential, commercial, and industrial development, and public facilities that may interfere with normal agricultural operations.

5. To achieve the goals stated in the master plan, including preservation of rural character, continuation of agriculture, economic development, and natural resource protection.

6. To preserve wetlands and natural areas associated with farms, that because of their natural physical features are useful, as water retention and groundwater recharge areas, and as wildlife habitat; and that have an important aesthetic and scenic value, which contributes to the unique character of the community.

7. To maintain and enhance food self-sufficiency, including: local food for local people; reduced energy consumption; and employment opportunities in the community.

**C. Boundaries of the District:** The Agricultural Conservation District shall be an overlay district as depicted on a map entitled Allenstown Agricultural Conservation District as prepared by Central New Hampshire Regional Planning Commission (CNHRPC) and dated March 8, 2011 and filed at the Allenstown Town Clerk's Office.

For a property owner who questions the actual location of desirable farm soils (as described in this Article) on his or her property the following process shall be used to appeal the location:

(1) Where the bounds of the identified prime farmland, as delineated on the official zoning map, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall engage, at the land owner's expense and request, a qualified soil scientist to conduct an investigation and prepare a report determining the proper location and extent of the prime farmland relative to the property in question. This report shall include but not be limited to:

(a) A detailed topographic layout of the subdivision and/or area to be developed, prepared by a registered land surveyor.
(b) The location of any County Soil delineations
(c) The locations of all High Intensity Soil Survey test pit locations.
(d) The Prime Farmland boundary as shown on the Official Zoning Map shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line.
(e) Any additional soil mapping, hydrogeologic reports or information which becomes available as a result of recent or on-going scientific investigation of the location and extent of aquifers, performed by the US Geological Survey; NH State agencies or boards, or the Town of Allenstown or the agents of any of the above.

(2) The Planning Board may, based upon the findings above, adjust the boundary or area designation of the Agricultural Conservation District or reduce or expand the area so designated so as to more correctly define the location and extent of the location(s) of Prime Farmland on a site-specific, case-by-case basis.

(3) The Planning Board shall reserve the right to withhold action on such plat pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of the acceptance of the application or such further time as deemed necessary and as provided for by NH State statute.

**Section 2202 Permitted Uses**

A. Agriculture.
B. Farm worker dwellings.
C. Farm roadside stand. Shall also require obtaining a peddler's license in accordance with NH RSA 320.
D. Accessory structures for agricultural use.
E. Agritourism.
F. Operation of agricultural/forestry vehicles and processing machinery.
G. Uses from the underlying zoning district(s) that meet the performance standards of this Chapter.

**Section 2203 Performance Standards for Non-Agricultural Uses**

In general, the use of land and structures within the Agriculture Conservation District shall seek to maximize agricultural productivity. The non-agricultural use of land and structures must also conform to the following design standards that create a minimum level of consistency in lot and parcel configuration:

**A. Design Standards**

All non-agricultural uses developed either on frontage lots or within a conservation/open space subdivision shall comply with the following standards:

1. All buildings, homes and structures shall be located a minimum of 100 feet from agricultural land and shall be separated by a 50-foot wide buffer strip sufficient to minimize conflicts between farming operations and non-agricultural. This buffer shall be on the land developed for the non-farming use and may consist of trees and/or fencing.

2. Each structure shall be integrated into the existing landscape on the property so as to minimize its visual impact and maintain visibility of adjacent agricultural lands from public ways through use of vegetative and structural screening, landscaping, grading and placement on or into the surface of the lot.

**B. Additional Requirements for Subdivision/Site Plan Approval**

The applicant shall comply with the minimum requirements for subdivision/ site plans, and shall also submit to the planning board the following information:

1. Description or illustration of the physical characteristics, within and 200 feet adjacent to this site, including: prime agricultural soils, soils of state and local importance, other soils and soil characteristics, areas used for crop or other agricultural production.

2. Description of compliance with Agricultural Land and Development Standards and Site Design Standards in Section D of this chapter.

**C. Criteria for Review:** The planning board shall also consider whether:

1. The development is in compliance with Agricultural Land and Development Standards (Section D, below).
2. The development will interfere with farming operations on adjacent lands.
3. The development is situated on the portion of the site with soils least suitable for the production of crops or livestock.
4. The development is integrated into the existing landscape through features such as vegetative buffers, and through retention of open agricultural land.

**D. Agricultural Land and Development Standards**

1. Residential subdivision developments in the Agricultural Conservation District on lots greater than 15 acres with at least 200 feet of frontage shall be laid out according to the Cluster Housing standards set forth in Section 602.m of the Allenstown Zoning Ordinance. In no instance shall the enforcement of this chapter result in the

number of units being less than those permitted under a "conventional" subdivision – i.e. underlying lot sizes shall apply. All buildings and roads shall be located away from soils that are most suitable for agriculture (based on Natural Resource Conservation Service classifications for prime farmland soils and soils of state and local importance) to the maximum practical extent. This provision does not apply to the location of on-site septic disposal facilities that must be placed in soils meeting N.H. Department of Environmental Services rules. If any conflict arises between the provisions of this chapter and section 602.m this chapter shall apply. Developments not meeting the threshold of 15 acres as described in this subparagraph shall be controlled by underlying zoning density and shall be placed, to the maximum extent feasible, away from agricultural soils on site.

2. All roads, drainage systems and utilities shall be laid out in a manner so as to have the least possible impact on agricultural lands and uses.
3. Under the supervision of the conservation commission, all wetlands shall be identified, and their area subtracted from the net developable acreage of the total parcel.

**D. Protection of Open Agricultural Land**

The following standards shall apply to all subdivisions process under this Article:

1. All remaining open agricultural land shall be permanently protected by either:

   a. A permanent conservation easement or deed restriction conveyed to the municipality with municipal approval or to a non-profit farmland trust or conservation organization whose principal purpose is to conserve farmland and open space, or other suitable entity.
   b. Ownership in fee conveyed to the municipality with municipal approval or to a non-profit farm trust, open space or conservation organization as a gift or for a consideration.
   c. As otherwise approved by the Planning Board.

2. At a minimum, such an easement, fee ownership, or restriction shall entail the use of management practices that ensure existing fields or pastures will be plowed or mowed at least once every year.

**F. Agricultural/Farming Signage**

This section pertains to signs which identify agricultural operations (Agricultural Signs) and signs which advertise farm products and/or services (Agricultural Product Signs). The scope of this ordinance is to regulate only those signs which are designed to be legible from the public traveled way. Farm Signs shall be required to meet only these standards and any applicable state standards.

a. General Provisions:
   1. The sign or signs shall not be placed within the State or Town rights of way or overhanging into the same.

2. The sign may be illuminated from the top area of the sign shining downward on the sign and only during open business hours and only by exterior light directly illuminating the sign from a light source(s) mounted on the sign or on a pole for housing said light within five (5) feet of said sign and no higher than two(2) feet above the sign structure without directing the light source as to create a potential hazard to traffic, pedestrians and others using the public traveled way to minimize "Light Trespass."
3. Directional and Informational signs for pedestrian and vehicular traffic into and throughout the property shall be permitted. Signs of this type which are designed to be clearly legible from any adjacent public traveled way or from any property line not in the same ownership as the parent parcel shall not display any farm names, logos, designs or diagrams advertising products for sale. These types of signs may be illuminated only during times necessary for the safety of patrons.
4. An agricultural sign permit shall be required from the Building Inspector or Code Enforcement Officer, whichever is tasked with the issuance of building permits.
5. Exceptions: This ordinance excludes signs including but not limited to third party recognition or designation such as: American Tree Farm System, Conservation Easement property identification, Certified Organic Farm, Farm of Distinction, Heritage Farms and Barns Historic Structures, and others to be determined by the Building Inspector or Code Enforcement Officer, whichever is in the employ of the Town, on a case by case basis.

**Section 2204 Agricultural Management Standards**

All farms are recommended to develop and keep current soil conservation and nutrient management plans in compliance with Natural Resource Conservation Service standards, where appropriate.

# Article XXIII – Suncook Village Infill Development District

**03/08/2011**

**Section 2301 Purpose and Intent**

The purpose of this district is to provide for mixed uses with efficient land use and cost-effective delivery of services. The provisions of this district recognize the design challenges inherent to developing infill properties, and ensure that new development is consistent in character and scale with existing development. The intent of this district is to:

A. Accommodate growth in Allenstown by encouraging and facilitating new development on vacant, bypassed and underutilized land within areas that already have infrastructure, utilities, and public facilities, while addressing the needs of Allenstown residents.
B. Encourage efficient use of land and public services in the context of existing communities.
C. Stimulate economic investment and development in established neighborhoods.
D. Provide developers and property owners flexibility so that they can achieve high quality design and develop infill projects that strengthen existing communities.
E. Create a high quality community environment that is enhanced by a balanced compact mix of residential, commercial, recreational, open space, employment and institutional uses and building types.
F. Implement the goals, objectives, and policies of the master plan relating to economic development and the protection of community character.
G. Provide clear standards for infill development.
H. Encourage compact development that is pedestrian-scaled.
I. Retain/preserve the historic village character in Suncook.

**Section 2302 Applicability**

The Suncook Village Infill Development District shall be an overlay district as depicted on a map entitled Suncook Village Infill Development District as prepared by Central New Hampshire Regional Planning Commission (CNHRPC) and dated March 8, 2011 and filed at the Allenstown Town Clerk's Office.

**Section 2303 General Requirements**

The proposed development shall incorporate the following elements to enhance compatibility with the surrounding community:

A. Sidewalks that connect to the adjacent sidewalk system.
B. Public streets that connect to the adjacent street pattern and that are designed to discourage speeds and volumes that impede pedestrian activity and safety.
C. Preservation of architecturally significant structures whenever feasible.
D. Street furniture, lighting and landscaping that is primarily oriented to pedestrian use.
E. Setbacks, building envelopes, use and parking compatible with surrounding community.
F. All new buildings (except accessory structures) shall have the primary entrance oriented to the street or public walkway, with direct, barrier-free and convenient pedestrian connections.

**Section 2304 Permitted Uses**

In addition to uses permitted in the underlying zone, the following uses are permitted in the Infill

Overlay District:

A. Home occupations.
B. Residential units on the upper floors of commercial buildings.
C. Retail Sales
D. Churches.
E. Convenience/Grocery Stores
F. Clubs, private or public
G. Banks.
H. Restaurants (without drive through).
I. Health/personal care stores
J. Real estate/leasing offices.
K. Accounting/bookkeeping/Administrative support.
L. Professional Offices and services (including but not limited to attorney, doctor, financial/investment services, computer/IT services, etc).
M. Pharmacies
N. Art studios/Galleries.
O. Cafés/Wine Bars/Coffee Houses (open to 11:00 PM).
P. Bed and Breakfast.
Q. Gardens when incidental to primary use.
R. Outdoor Municipal Recreation
S. Government Office Uses
T. Senior Housing
U. Single Family Dwellings
V. Duplex
W. Multi-Family Dwelling
X. Funeral Home
Y. Personal Service Facilities
Z. Veterinary Offices (not hospital)
AA. Family Child Care (no more than 6 children)

**Section 2305 Uses Permitted By Special Exception**

The following uses are permitted in the Zone by Special Exception:

**A.** Accessory Dwelling Units

**Section 2306 Development Standards**

**A.** **Lot size**: Minimum lot sizes shall be as follows:
   a. 7,500 square feet for solely commercial activities
   b. 5,000 square feet for solely residential activities
   c. 10,000 square feet for first floor commercial and 2nd/3rd floor residential
   d. 9,000 square feet first floor commercial and 2nd/3rd floor residential when all residential units are restricted to owners and/or employees of the first floor commercial enterprise taking place in the building.

**B.** **Setbacks:** Front and rear setbacks shall be at least 10 feet. There shall be at least 20 feet between buildings on abutting lots.

**C**. **Density:** Density shall be controlled by the allowable building height (not to exceed 35'), required setbacks in B above, building code requirements, and the availability of water and sewer service.

**D**. **Bulk and Scale:** Building size, scale, and architecture shall be consistent with the neighborhood.

**E**. **Building Orientation:** Primary facades and entries shall face the adjacent street with a connecting walkway that does not require pedestrians to walk through parking lots or across driveways.

**F**. **Accessory Dwellings:** Single-family homes are permitted one accessory dwelling unit per lot and shall be allowed in addition to the principal dwelling unit.

**G**. **Privacy:** Optimize privacy of residents and minimize infringement on the privacy of adjoining land uses through the placement of windows and door entrances. Create opportunities for interactions among neighbors in common pedestrian circulation areas of the project.

**H**. **Parking:** Parking requirements may be waived if there is suitable and available parking, as demonstrated by the applicant, within close proximity of the site. Parking shall be provided in the rear of buildings, or if no rear parking is available, on the side of the property. In no case is parking on sidewalks or pedestrian ways permitted.

**I**. **Pedestrian Access and Circulation:** Continuous sidewalks shall be provided between primary entrances to buildings, parking areas, pedestrian facilities on adjacent properties, and existing public sidewalks along perimeter streets.

**J.** **Architecture, Facades and Rooflines:** Shall blend with the historic architecture, stiles, roof pitch and façade of the neighborhood.

**K.** **Signage:** Signage shall be externally lit and be in compliance with any other signage requirements outlined in the Allenstown Zoning Ordinance.

**L.** **Lighting Standards:** External lighting shall be down-cast and not intrusive to neighbors.

**Section 2307 Application Process**

Each application submitted under the provisions and authority of this Chapter will do so as a minor site plan unless waived by the Planning Board.

# Article XXIV- Groundwater Protection Overlay District

(Adopted 3/8/11)

**I. Authority**

The Town of Allenstown hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

**II. Purpose**

The purpose of this ordinance is, in the interest of the public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater.

The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

**III. Groundwater Protection District**

A. The Groundwater Protection District shall be an overlay district as depicted on a map entitled Allenstown Groundwater Protection District as prepared by Central New Hampshire Regional Planning Commission (CNHRPC) and dated March 8, 2011 and filed at the Allenstown Town Clerk's Office.

B. Disputed Boundary Zones

When the actual boundary of the Groundwater Protection District is in dispute by any landowner or abutter affected by said boundary, the Planning Board, at the landowner/abutter's expense and request, may engage the services of a professional geologist, hydrologist or hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. Geology testing required by the Planning Board for review of boundary disputes shall be conducted at the owner/abutter's expense in accordance with a scope of work determined by a consultant hired by the Town, but paid for by the owner/abutter. This report shall include but not be limited to the following:

(a) A two-foot interval topographic layout prepared by a registered land surveyor of the subdivision and/or area to be developed;

(b) A site specific soils map of the subdivision and/or area to be developed prepared by a soils scientist qualified in hydrologic studies including a written report of his/her on-site field inspection and test boring data;

(c) The Groundwater Protection District boundary shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line;

(d) Evidence derived from a pumping test(s) or a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of aquifer or recharge area; and

(e) Where the area in question is the Wellhead Protection Area, evidence shall also comply with guidelines published by NHDES for Phase II delineations of public water systems in order to determine the contribution zone of any portion of a municipal water supply that lies beneath the subject parcel.

Additional mapping, hydrogeologic reports or information which becomes available as a result of recent or on-going scientific investigations of the locations and extent of aquifers performed by the U.S. Geological Survey, New Hampshire State agencies or boards, the Town of Allenstown or agents of any of the above. The Planning Board, under the advisement of the Conservation Commission, shall have the authority to adjust the boundary or area designation of the Groundwater Resource Conservation District based upon any findings or reports submitted under this section.

IV. **Applicability**

This ordinance applies to all the uses in the Groundwater Protection District, except for those uses exempt under Section XI (Exemptions) of this Chapter

V. **Performance Standards**

The following Performance Standards apply to all the uses in the Groundwater Protection District unless exempt under Section XI.

A. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a storm water management plan shall be prepared in accordance with the Allenstown Permanent (Post-Construction) Stormwater Management Ordinance.

B. Conditional uses, as defined under Section IX shall develop a stormwater management plan prepared in accordance with the Allenstown Permanent (Post-Construction) Stormwater Management Ordinance and a pollution prevention plan including information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators (USEPA, Feb 2009). The plan shall demonstrate that the use will:

1) Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Allenstown Permanent (Post-Construction) Stormwater Management Ordinance;

2) Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;

3) Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase 1 Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);

4) Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.

C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets and Food, July 2008 and any subsequent revisions.

D. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;

E. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;

F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least fifty feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;

G. Secondary containment must be provided for storage of regulated substances. The outdoor storage of regulated substances must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);.

H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;

I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with WE 604 of The NH Water Well Board Rules;

J. Blasting activities shall be planned in accordance with any Town of Allenstown blasting regulations and shall be conducted in a manner to minimize groundwater contamination.

K. With the exception of delivery of heating fuel to residences, transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.

L. Stored regulated substances shall be inspected quarterly. Inspections shall be self-inspections with documentation signed by the property owner and/or facility operator and submitted to the Fire Chief within thirty (30) days of completion. For Town facilities, the document shall be signed by the Board of Selectmen. Facilities are subject to random spot-check by the Fire Chief during normal business hours excluding holidays, nights and weekends.

M. Fertilizer shall be used and disposed of in accordance with manufacturer's standards. Fertilizer shall be stored in a manner wherein it cannot leak into storm drains or surface water. Spills shall be cleaned up immediately and shall be done so according to manufacturer's standards.

VI. **Spill Prevention, Control, and Countermeasure Plan (SPCC)**.
Conditional uses, as described under Section IX part (A) below, using regulated substances shall submit a SPCC plan to the Fire Chief who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods, or fires that may cause large releases of regulated substances. The Town may consult third party entities at the expense of the applicant to ensure compliance. The SPCC shall include those provisions listed in Allenstown Town Ordinance CO217.

VII. **Permitted Uses.**
All uses permitted by right or allowed by special exceptions in the underlying district are permitted in Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under Article V.

VIII. **Prohibited Uses.**
The following uses are prohibited in the groundwater Protection District.

A. The development or operation of hazardous water disposal facility as defined under RSA 147-A;

B. The development or operation of a solid waste landfill;

C. The outdoor storage of road salt or other deicing chemicals in bulk;

D. The development or operation of a junkyard;

E. The development or operation of a snow dump;

F. Biosolids processing/disposal/mixing;

G. The development or operation of a petroleum bulk plant or terminal;

H. The development or operation of gas stations.

I. Floor drains without oil and water separation.

IX. **Conditional Uses**

The Planning Board may grant a conditional use permit for a use which is otherwise permitted within the underlying district, if the permitted use is involved in one or more of the following:

A. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time provided that the appropriate Spill Prevention Control and Countermeasure (SPCC) plan is approved, in accordance with Article VII of this chapter, by the Fire Chief.

B. Any use that will render impervious more than 15% or 2,500 SQ feet of any lot, whichever is greater.

C. Any activities that involve blasting of bedrock

In granting such approval, the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Section VIII of this Article) and will comply with The Performance Standards and Article V as well as all applicable local, state, and federal requirements. The Planning Board will require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with The Performance Standards.

X. **Existing Non-Conforming Uses.**

Existing Non- Conforming Uses may continue without expanding or changing to another non-conforming use.

XI. **Exemptions.**

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements.

a. Any private residence is exempt from all Performance Standards;

b. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Article V, Performance Standards, sections E through H;

c. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion

control, leak detection and secondary containment in place, is exempt from Performance Standard E;

d. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standard E-H;

e. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E-H if incorporated within the site development project within six months of their deposit on site;

f. Storage/use of office supplies is exempt from Performance Standards E-H;

g. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions in this ordinance;

h. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03 (b)(1) and 501.01(b) are exempt from Standards E-H;

i. Underground storage tank systems and aboveground systems that are in compliance with applicable state rules are exempt from inspections under Article XIV of this ordinance.

XII. **Relationship Between State and local requirements.**

Where both the State and municipality have existing requirements the more stringent shall govern.

XIII. **Maintenance and Inspection:**

a. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Merrimack County. The description shall comply with requirements of RSA 478:4-a. Said narrative shall contain a list of all structures put in place to comply with Performance Standards as well as a brief description of the required maintenance of each.

b. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Building Inspector or other agent designated by the Board Selectmen at reasonable times with prior notice to landowner.

c. All properties within the Groundwater Protection District known to the Building Inspector or other agent designated by the Board Selectmen as using or storing regulated substances in containers with a capacity of five gallons or more, except facilities already exempt under Article XI shall be subject to inspection under this article. Such uses in existence before March 8, 2011 (the effective date of this Article) shall not be subject to the provisions of this subparagraph.

d. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

XIV. **Enforcement Procedures/ Penalties.**

Any violation of the requirements of this ordinance shall be subject to enforcement penalties detailed in RSA 485-C:16 and RSA 676:17 and RSA 676:17-a.

XV. **Saving Clause**

If any of the provisions of this ordinance is found to be unenforceable, such provision shall be considered separable and should not be construed to invalidate the remainder of the ordinance.

XVI. **Effective Date:** This ordinance shall be effective upon adoption by the legislative body.

# Article XXV –
# Permanent (Post-Construction) Stormwater Management Ordinance

## I. PURPOSE

To protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff, decreased groundwater recharge, and non-point source pollution associated with new development and redevelopment.

## II. AUTHORITY

The provisions of this Article are adopted pursuant to RSA 674:16, Grant of Power, RSA 674:17, Purposes of Zoning Ordinance, and RSA 674:21, Innovative Land Use Controls.

## III. APPLICABILITY

The requirements of this Article shall apply to land disturbance, development, and/or construction activities in all zoning district(s).

## IV. STORMWATER MANAGEMENT PLAN

All developments (new or redeveloped) disturbing greater than 20,000 square feet of area shall submit a permanent (post-construction) Stormwater Management Plan (SMP) with an application for subdivision or site plan review. The permanent SMP, which shall be stamped and signed by a licensed New Hampshire, professional engineer, shall address and comply with the requirements set forth herein and as specified by the planning board.

A. Stormwater Pollution Prevention Plan (SWPPP): Commercial and Town maintenance garages, public works yards, transfer stations, recycling centers and other waste handling facilities where pollutants are (or are proposed to be) exposed to runoff and not covered by a site-level EPA stormwater permit shall also submit a Stormwater Pollution Prevention Plan (SWPPP) according to the following:
    1. Applications before the Planning Board shall present the SWPPP for approval during the application process. The Board shall seek input from the Road Agent during the process. Approval of the site plan or subdivision application shall constitute an approval of the SWPPP.
    2. Existing facilities shall submit a SWPPP to the Planning Board for approval no later than January 1, 2017 under the conditional use permit process. The Board shall seek input from the Road Agent during the approval process.
    3. The minimum components of the SWPPP shall include:
        i. Description of the facility.
        ii. Identification of potential pollutant sources.
        iii. Identification of stormwater controls.
        iv. Description of methods to minimize exposure of the pollutants.
        v. Preventative maintenance provisions.
        vi. Spill prevention and response.
        vii. Methods for erosion and sediment control.

viii. Stormwater management runoff methods (description of stormwater management/drainage structures, etc.).
ix. Employee training schedule/topics.
x. Schedule for maintenance of control measures (stormwater, erosion/sediment).
xi. Salt piles, if present must be covered by January 1, 2017.
xii. Schedule for inspections of pollutant sources and stormwater controls once a quarter. Inspections shall be self-inspections with documentation signed by the property owner and/or facility operator and submitted to the Road Agent within thirty (30) days of completion. For Town facilities, the document shall be signed by the Board of Selectmen. Facilities are subject to random spot-check by the Road Agent during normal business hours excluding holidays, nights and weekends.

## V. PERMANENT STORMWATER MANAGEMENT REQUIREMENTS

All development activity must comply with the following provisions to reduce and properly manage stormwater post-construction:

A. Maximum effective impervious cover shall not exceed 20 percent of a site. Impervious cover may be disconnected from the stormwater drainage network, to reduce total effective impervious cover, through such techniques as infiltration or sheet flow over a pervious area. In the event an Applicant before the Planning Board (Site Plan and/or Subdivision) can demonstrate to the Board that such coverage cannot be avoided due to the unique features of the site as well as the scale and scope of the development's needs (i.e. a large floor space due to a warehouse proposal) the provisions of Subsection IV.E.1 of this Chapter shall apply.

B. BMP techniques shall be used to meet the conditions below for control of peak flow and total volume of runoff, water quality protection, and maintenance of on-site groundwater recharge.

1. Stormwater management practices shall be selected to accommodate the unique hydrologic and geologic conditions of the site.

2. The use of nontraditional and/or nonstructural stormwater management measures shall be implemented to the maximum extent practical. Applicants shall demonstrate why the use of nontraditional and/or nonstructural approaches are not possible before proposing to use traditional, structural stormwater management measures.

3. The applicant shall demonstrate how the proposed control(s) will comply with the requirements of this ordinance, including the control of peak flow and total volume of runoff, protection of water quality, and recharge of stormwater to groundwater. The applicant must provide design calculations and other back-up materials necessary.

4. The planning board shall require that stormwater management systems

incorporate designs that allow for shutdown and containment, when needed, in the event of an emergency spill or other unexpected contamination event.

5. Stormwater management systems shall not discharge to surface waters, ground surface, subsurface, or groundwater within 100 feet of a surface water body that is located within a water supply intake protection area.

6. Stormwater management systems shall not discharge within the setback area for a water supply well as specified in the following table:

| Well Type | Well Production Volume (gallons per day) | Setback from Well (feet) |
|---|---|---|
| Private Water Supply Well | Any Volume | 75 |
| Non-Community Public Water Supply Well | 0 to 750 | 75 |
| | 751 to 1,440 | 100 |
| | 1,441 to 4,320 | 125 |
| | 4,321 to 14,400 | 150 |
| Community Public Water Supply Well | 0 to 14,400 | 150 |
| Non-Community and Community Public Water Supply Well | 14,401 to 28,800 | 175 |
| | 28,801 to 57,600 | 200 |
| | 57,601 to 86,400 | 250 |
| | 86,401 to 115,200 | 300 |
| | 115,201 to 144,000 | 350 |
| | Greater than 144,000 | 400 |

7. BMPs shall be designed to convey a minimum design storm event, as described in the table below, without overtopping or causing damage to the stormwater management facility.

| Treatment Practice | Design Storm Event |
|---|---|
| Stormwater Pond | 50-year, 24-hour storm |
| Stormwater Wetland | 50-year, 24-hour storm |
| Infiltration Practices | 10-year, 24-hour storm |
| Filtering Practices | 10-year, 24-hour storm |
| Flow through Treatment Swales | 10-year, 24-hour storm |

8. Sanitary sewers are prohibited from "tying into" and merging with storm sewers.

9. Applicants before the Planning Board wishing to tie a proposed storm sewer system into the Town's existing storm sewer system shall first obtain a permit or written authorization from the Allenstown Sewer Department.
10. All stormwater management components/drainage components shall, at a minimum, comply with the New Hampshire Stormwater Manual, as amended.

C. Protection of natural hydrologic features and functions.

1. Site disturbance shall be minimized. Vegetation outside the project disturbance area shall be maintained. The project disturbance area shall be depicted on site plans submitted as part of the site plan review process. The project disturbance area shall include only the area necessary to reasonably accommodate construction activities. Utilizing the temporary erosion control standards in the site plan regulations, an applicant and/or land owner is required to construct siltation fencing or other temporary erosion control measures around the perimeter of the proposed project during construction. Such measures shall remain in effect and functional until the project is completed and the permanent drainage/groundwater protection measures become operational. Erosion control measures shall also be provided when the permanent drainage/groundwater protection measures are being repaired and are expected to be inoperative for more than one day (24 hours). Disturbance shall also be minimized during the repair of permanent drainage/groundwater protection features. The Planning Board reserves the right to adjust the duration of time for the provisions of temporary erosion control measures as well as the type/method of measures during the site plan and/or subdivision application process.

2. Soil compaction on site shall be minimized to the greatest extent possible during construction.

3. Development shall follow the natural contours of the landscape to the maximum extent possible. A grading plan shall be submitted as part of the site plan review process showing both existing and finished grade for the proposed development.

4. With the exception of roads and permitted commercial gravel pits cut and fill shall be minimized. The maximum height of any fill or depth of any cut area, as measured from the natural grade, shall not be greater than 10 feet, excluding commercial gravel pits and the construction of roads.

5. No ground disturbed as a result of site construction and development shall be left as exposed bare soil at project completion. All areas exposed by construction, with the exception of finished building, structure, and pavement footprints, shall be decompacted (aerated) and covered with a minimum thickness of six inches of non-compacted topsoil, and shall be subsequently planted with a combination of living vegetation such as grass, groundcovers, trees, and shrubs, and other landscaping materials (mulch, loose rock, gravel, stone). Whenever practical, native species shall be utilized. The use of non-native species shall be justified to the Planning Board during the site plan or subdivision application process by the applicant. The Planning Board reserves the right to approve or disapprove the

use of non-native species for vegetation to be used for erosion control purposes.

6. Priority shall be given to maintaining existing surface waters and systems, including, but not limited to, perennial and intermittent streams, wetlands, vernal pools, and natural swales.

    a. Existing site hydrology shall not be modified so as to disrupt on-site and adjacent surface waters. The applicant must provide evidence that this standard can be achieved and maintained over time.

    b. Existing surface waters (Forth Order Streams and higher) as well as wetlands shall be protected by a 50 foot no disturbance, vegetated buffer. Paragraphs d and e below shall control when such a buffer cannot be maintained.

    c. BMPs shall not be located within the 50 foot no disturbance, vegetated buffer or within 50 feet of steep banks (greater than 15 percent slope).

    d. Where roadway or driveway crossings of surface waters cannot be eliminated, disturbance to the surface water shall be minimized, hydrologic flows shall be maintained, there shall be no direct discharge of runoff from the roadway to the surface water, and the area shall be revegetated post-construction. The Applicant shall demonstrate methods of compliance to the Planning Board during the Site Plan and/or Subdivision application process.

    e. Stream and wetland crossings shall be eliminated whenever possible. When necessary, stream and wetland crossings shall comply with state current recommended design standards to minimize impacts to flow and animal passage (See NH Fish and Game Department current standards). The Applicant shall demonstrate methods of compliance to the Planning Board during the Site Plan and/or Subdivision application process.

D. Post-development peak flow rates and total runoff volumes.

1. The applicant shall provide pre- and post-development peak flow rates and volumes. Any site that was wooded in the last five years must be considered undisturbed woods for the purposes of calculating pre-development peak flow rates and volumes. The determination of "wooded" will be determined by the existing conditions survey that is normally conducted during the Site Plan or Subdivision application process.
2. The two-year, 24-hour post-development peak flow rate shall be (a) less than or equal to 50 percent of two-year, 24-hour storm pre-development peak flow rate or (b) less than or equal to the one-year, 24-hour storm pre-development peak flow rate.
3. The 10-year, 24-hour post-development peak flow rate shall not exceed the 10-year, 24-hour pre-development peak flow rate for all flows off-site.
4. The 50-year, 24-hour post-development peak flow rate shall not exceed the 50-year, 24-hour pre-development peak flow rate for all flows off-site.
5. Measurement of peak discharge rates shall be calculated using point of discharge or the down-gradient property boundary. The topography of the site may require evaluation at more than one location if flow leaves the property in more than one direction. Calculations

shall include runoff from adjacent up-gradient properties.

6. An applicant may demonstrate that a feature beyond the property boundary is more appropriate as a design point and utilize it for design purposes.
7. The post-development total runoff volume shall be equal to 90 to 110 percent of the pre-development total runoff volume (based on a two-year, 10-year, 25-year, and 50-year, 24-hour storms). Calculations shall include runoff from adjacent up-gradient properties.

E. Water Quality

1. If more than 35 percent of the total area of the site will be disturbed or the site will have greater than 20 percent effective impervious cover, the applicant shall demonstrate that their stormwater management system will:
    a. Remove 80 percent of the average annual load of total suspended solids (TSS), floatables, greases, and oils after the site is developed.
    b. Remove 40 percent of phosphorus.
2. Compliance with the recharge requirements under Section F, consistent with the pre-treatment and design requirements in Sections F.2 and F.3 shall be considered adequate to meet the treatment standards specified in VI.E.1.
3. Applicants not able to comply with Section F must provide suitable documentation, including a pollutant loading analysis from an approved model, that the treatment standards specified in VI.E.1 will be met.
4. Groundcover shall be provided between impervious areas (buildings and paved areas) and waterways (ditches, swales, delineated wetlands, shorelines, etc.).

F. Recharge to Groundwater

Except where prohibited, stormwater management designs shall demonstrate that the annual average pre-development groundwater recharge volume (GRV) for the major hydrologic soil groups found on-site are maintained.

1. For all areas covered by impervious cover, the total volume of recharge that must be maintained shall be calculated as follows:

    a) REQUIRED GRV =
    1. (Total Impervious Cover) x (Groundwater Recharge Depth) / 12
    Where Total Impervious Cover is the area of proposed impervious cover that will exist on the site after development. And where Groundwater Recharge Depth is expressed as follows:

| USDA/NRCS Hydrologic Soil Group (HSG) | Groundwater Recharge Depth (inches) |
|---|---|
| A | 0.40 |
| B | 0.25 |
| C | 0.10 |
| D | not required |

Example: Applicant proposes 30,000 square foot parking lot over C soils.
REQUIRED GRV = 30,000 X 0.10 = 3,000/12 = 250

REQUIRED GRV= 250 ft3

b. Where more than one hydrologic soil group is present, a weighted soil recharge factor shall be computed.

3. Pre-Treatment Requirements
   a. All runoff must be pretreated prior to its entrance into the groundwater recharge device to remove materials that would clog the soils receiving the recharge water.
   b. Pretreatment devices shall be provided for each BMP, shall be designed to accommodate a minimum of one-year's worth of sediment, shall be designed to capture anticipated pollutants, and be designed and located to be easily accessible to facilitate inspection and maintenance.

4. Sizing and design of infiltration (recharge) BMPs
   a. All units shall be designed to drain within 72 hours from the end of the storm.
   b. The floor of the recharge device shall be at least three feet above the seasonal high water table and bedrock.
   c. Soils under BMPs shall be scarified or tilled to improve infiltration.
   d. Infiltration BMPs shall not be located in areas with materials or soils containing regulated or hazardous substances or in areas known to DES to have contaminants in groundwater above ambient groundwater quality standards or in soil above site-specific soil standards.

5. Infiltration may be prohibited or subject to additional pre-treatment requirements under the following circumstances:
   a. The facility is located in a well-head protection area or water supply intake protection area; or
   b. The facility is located in an area where groundwater has been reclassified to GAA, GA1 or GA2 pursuant to RSA 485-C and Env-Dw 901; or
   c. Stormwater is generated from a "high-load area," as described under Section G.

G. Land Uses with Higher Potential Pollutant Loads
1. The following uses or activities are considered "high-load areas," with the potential to contribute higher pollutant loads to stormwater, and must comply with the requirements set forth in subsections 2, 3, and 4 below:

   a. Areas where regulated substances are exposed to rainfall or runoff; or
   b. Areas that typically generate higher concentrations of hydrocarbons, metals, or suspended solids than are found in typical stormwater runoff, including but not limited to the following:

      i. Industrial facilities subject to the NPDES Multi-Sector General Permit (MSGP); not including areas where industrial activities do not occur, such as at office buildings and their associated parking facilities or in drainage areas at the facility where a certification of no exposure will always be possible [see 40CFR122.26(g)].
      ii. Petroleum storage facilities.
      iii. Petroleum dispensing facilities.

iv. Vehicle fueling facilities.
v. Vehicle service, maintenance and equipment cleaning facilities.
vi. Fleet storage areas.
vii. Road salt storage and loading facilities (non-municipal).
vii. Commercial nurseries.
viii. Non-residential facilities having uncoated metal roofs with a slope flatter than 20 percent.
x. Facilities with outdoor storage, loading, or unloading of hazardous substances, regardless of the primary use of the facility.
xi. Facilities subject to chemical inventory under Section 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA).
xii. Commercial parking areas with over 1,000 trips per day.

c. If a high-load area demonstrates, through its source control plan, the use of best management practices that result in no exposure of regulated substances to precipitation or runoff or release of regulated substances, it shall no longer be considered a high-load area.

2. In addition to implementation of BMPs for designing site-specific stormwater management controls, uses included under subsection G.1 shall provide a stormwater pollution prevention plan (SWPPP, see margin note below), describing methods for source reduction and methods for pretreatment.

4. Infiltration of stormwater from high-load areas, except commercial parking areas, is prohibited. Infiltration, with appropriate pre-treatment (e.g., oil/water separation) and subject to the conditions of the SWPPP, is allowed in commercial parking areas and others areas of a site that do not involve potential "high-load" uses or activities (e.g., where a certification of "no exposure" under the MSGP will always be possible).

5. For high-load areas, except commercial parking areas, filtering and infiltration practices, including but not limited to, sand filters, detention basins, wet ponds, gravel wetlands, constructed wetlands, swales or ditches, may be used only if sealed or lined.

H. Parking

1. Snow may not be plowed to, dumped in, or otherwise stored within 15 feet of a wetland or waterbody, except for snow that naturally falls into this area. Snow storage areas shall be shown on the site plan to comply with these requirements.
2. The Applicant shall provide the Planning Board with a feasibility analysis to determine if parking spaces should be constructed of a pervious surface (i.e. grass, pervious asphalt, and pervious pavers).
3. Infrequently used emergency access points or routes shall be constructed with pervious surfaces (i.e. grass, pervious asphalt, and pervious pavers).

I. Redevelopment or Reuse

1. Redevelopment or reuse of previously developed sites must meet the stormwater management standards set forth herein to the maximum extent possible. To make this determination the planning board shall consider the benefits of redevelopment as compared to development of raw land with respect to stormwater.
2. Redevelopment or reuse activities shall not infiltrate stormwater through materials or soils

containing regulated or hazardous substances.

3. Redevelopment or reuse of a site shall not involve uses or activities considered "high-load areas" unless the requirements under Section G are met.

J. Easements

1. Where a site is traversed by or requires construction of a watercourse or drainageway, an easement of adequate width may be required for such purpose.
2. There shall be at least a ten foot wide maintenance easement path on each side of any stormwater management system element. For systems using underground pipes, the maintenance easement may need to be wider, depending on the depth of the pipe.

K. Performance Bond

1. To ensure that proposed stormwater management controls are installed as approved, a performance bond shall be provided as a condition of approval in accordance with the bond/surety standards outlined in the Allenstown Site Plan Regulations.

L. Operation and Maintenance Plan

1. All stormwater management systems, excepting those serving single family homes, shall have an operations and maintenance (O&M) plan to ensure that systems function as designed. This plan shall be reviewed and approved as part of the review of the proposed permanent (post-construction) stormwater management system and incorporated in the Permanent Stormwater Management Plan, if applicable. Execution of the O&M plan shall be considered a condition of approval of a subdivision or site plan. If the stormwater management system is not dedicated to the city/town pursuant to a perpetual offer of dedication, the property owner(s) shall be responsible for maintaining the system. For uses and activities under Section G, the O&M plan shall include implementation of the Stormwater Pollution Prevention Plan (SWPPP).

2. The stormwater management system owner is generally considered to be the landowner of the property, unless other legally binding agreements are established. This also applies to the Town of Allenstown.

3. The O&M plan shall, at a minimum, identify the following:
    a. Stormwater management system owner(s), (For subdivisions, the owner listed on the O&M plan shall be the owner of record, and responsibilities of the O&M plan shall be conveyed to the party ultimately responsible for the road maintenance, i.e. the Town should the road be accepted by the Town, or a homeowners association or other entity as determined/required under Section VI.L.1 above.)
    b. The party or parties responsible for operation and maintenance and, if applicable, implementation of the Stormwater Pollution Prevention Plan (SWPPP).
    c. A schedule for inspection and maintenance.
    d. A checklist to be used during each inspection.
    e. The description of routine and non-routine maintenance tasks to be undertaken.
    f. A plan showing the location of all stormwater management facilities covered by the O&M plan.
    g. A certification signed by the owner(s) attesting to their commitment to comply with the O&M plan.

h. Stormwater management/drainage components shall be subject to inspection by the Town Engineer. Escrow shall be provided for by the applicant to cover the cost of such inspections.

4. Recording:
   a. The owner shall provide covenants for filing with the registry of deeds in a form satisfactory to the planning board, which provide that the obligations of the maintenance plan run with the land.
   b. The owner shall file with the registry of deeds such legal instruments as are necessary to allow the city/town or its designee to inspect or maintain the stormwater management systems for compliance with the O&M plan.

5. Modifications:
   a. The owner shall keep the O&M plan current, including making modifications to the O&M plan as necessary to ensure that BMPs continue to operate as designed and approved.
   b. Proposed modifications of O&M plans including, but not limited to, changes in inspection frequency, maintenance schedule, or maintenance activity along with appropriate documentation, shall be submitted to the planning board within thirty days of change.
   c. Modifications shall, overall, not degrade the functionality of the stormwater management system and will be presumed to be adequate if the Board has not approved or denied the changes within 60 days. Such changes shall be considered minor revisions to the approved Plan and shall not require public hearing in accordance with RSA 676:4.1.i. The Board, at the cost of the owner, may engage an outside engineering consultant to determine if the proposed modifications are adequate.

M. Record Keeping

1. Parties responsible for the operation and maintenance of a stormwater management system shall keep records of the installation, maintenance and repairs to the system, and shall retain records for at least five years.
2. Parties responsible for the operation and maintenance of a stormwater management system shall provide records of all maintenance and repairs to the Building Inspector or other official designated by the Board of Selectmen during inspections and/or upon request.

N. Enforcement

When the responsible party fails to implement the O&M plan, including, where applicable, the SWPPP, as determined by the Building Inspector or Board of Selectmen, the municipality may pursue fines and penalties in accordance with RSA 676:17 and RSA 676:17-a..

## VI. AUTHORIZATION TO ISSUE A SPECIAL USE PERMIT

Authority is hereby granted to the planning board, as allowed under RSA 674:21 II, to issue a special use permit to allow variations from the requirements and restrictions set forth in this section upon the request of the applicant provided the development design and proposed stormwater management approach satisfy the following conditions:

1. Such modifications are consistent with the general purpose and standards of this section and shall not be detrimental to public health, safety or welfare;

2. The modified design plan and stormwater management approach shall meet the performance standards under sections VI.D-VI.F of this ordinance; and
3. The modified design plan and stormwater management approach shall satisfy all state and/or federal permit requirements, as applicable.

## VII. ENGINEERING REVIEW

A. The applicant shall submit a fee, as determined by the planning board, with their application for subdivision or site plan review to cover the cost of outside engineering review of their proposed permanent post-construction stormwater management system(s), and the separate Permanent Post-Construction Stormwater Management Plan (SMP) and Stormwater Pollution Prevention Plan (SWPPP), if applicable.

B. Additional copies of all plans, engineering studies, and additional information as requested by the planning board describing the proposed permanent post-construction stormwater management system shall be provided as necessary to allow for a thorough outside engineering review.

# Article XXVI 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 Allenstown'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 Allenstown 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 SOTRE, 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.

I. 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

II. 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 issues by the Town of Allenstown Planning Board pursuant to this ordinance.

b. For any person who operates a sexually orientated 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. And 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 Allenstown 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.

III. 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 incompliance 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.

IV. 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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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 <u>any</u> adult business <u>anywhere</u> 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 <u>all</u> 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 manufactured 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.

XI. 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.

XII. 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 martial 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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.

**XX 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.

**XXI Conflicting Ordinances Repealed**

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

**XXII Effective Date**

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

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**Dates of Revisions**:

Full details and language can be found at Town Hall within the Town Reports.

March 11, 2014: Section 202, added Accessory Agricultural Use definition; Section 401, updated relevant RSA references and changed subparagraph c to specify that only the Building Inspector is prohibited from sitting on the ZBA; Sections 402 through 404, to clarify process for hearing administrative decisions; Article XI to clarify process for conflict amongst ordinance provisions and amongst overlays and underlying zones; to establish Section 1120 regarding Accessory Agricultural Uses.

March 13, 2012: To adopt a revised Official Zoning Map for the Town of Allenstown.

March 8, 2011: To add and revise numerous definitions; to revise Sections 601 & 602; to revise Sections 701, 702 & 703; to revise Sections 801 & 802; to revise Section 901; to revise Sections 1001 & 1002; to revise Section 1113 and add a Section 1120; to adopt Article XXIII (Suncook Village Infill Development District); to adopt Article XXIV (Groundwater Protection Overlay District); to adopt Article XXV Permenant Post Construction Storm Water Management Ordinance); to amend Section 503; to adopt the provisions of RSA 79E.

March 9, 2010: Revise Article VIII (Business District); revise Article VII (Residential District); revise Article IX (Industrial District); revise Article X (Commercial/Light Industrial District); adopt Article XXVI (Adult Business Ordinance).

Prior to March 9, 2010: Please see Town Reports at Town Hall.