

SUBCHAPTER V - OVERLAY DISTRICTS

DIVISION A - SHORELAND OVERLAY DISTRICT (SD)

SECTION 9-511 PURPOSE (SD)

To protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views there from, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use, and to encourage and insure the integrity of points of access to water bodies.

[Derivation: Section 4.10(A), 1989 Zoning Ordinance; Ord. No. 11-02b, eff. 8/18/2011]

SECTION 9-512 DESCRIPTION (SD)

The Shoreland Overlay District (SD) includes all land areas within two hundred fifty (250) feet of the Kennebec River, within two hundred fifty (250) feet of Vaughan Brook from the Kennebec River upstream to Cascade Pond, within two hundred fifty (250) feet of Cascade Pond, within two hundred fifty (250) feet of the portion of Vaughan Brook upstream of Cascade Pond, within two hundred fifty (250) feet of Bombahook Stream from its confluence with Vaughan Brook to the upstream side of the Central Street R-O-W, and within seventy-five (75) feet of Bombahook Stream upstream of Central Street to its confluence with the stream that continues to the City recreation area as shown on the Official Zoning Map.

The Shoreland Overlay District (SD) includes any structure built on, over, or abutting a dock, wharf, pier or other structure extending beyond the normal high water mark of a water body. Because there is an existing framework of land use districts and performance standards, the shoreland zoning standards apply as an "overlay district". In other words, in the shoreline areas, the shoreline zoning requirements will be in effect in addition to the zoning requirements already established for these areas by other provisions of this Ordinance.

[Derivation: Section 4.10(B), 1989 Zoning Ordinance; Ord. No. 11-02b, eff. 8/18/2011]

SECTION 9-513 SHORELAND PERFORMANCE STANDARDS (SD)

The following additional standards apply to uses in the Shoreland Overlay District:

A. Minimum Lot Size and Frontage Requirements

- (1) The minimum requirements for lot size, lot area per dwelling unit, street frontage, and shore frontage are established by the district standards of the underlying zoning district in which the lot is located.

B. Principal and Accessory Structures

- (1) All new principal and accessory structures shall be set back from the normal high-water line of water bodies and tributary streams, and the upland edge of a shoreland wetland as provided for in the underlying district standards. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified in the district standards shall apply.

In addition:

- (a) The water body, tributary stream, or shoreland wetland setback provision shall neither apply to structures which require direct access to the water body or shoreland wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
 - (b) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or shoreland wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
- (2) Principal or accessory structures and expansions of existing structures shall not exceed thirty-five (35) feet in height or the maximum height standard of the district in which it is located whichever is greater. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
 - (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. Accessory structures may be placed in accordance with the standards of City's Floodplain Management requirements and need not meet the elevation requirements of this paragraph.
 - (4) The total footprint area or lot coverage of all structures, parking lots and other non-vegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the DT and R1 Districts,

where lot coverage shall not exceed seventy (70) percent and the BA District where it shall not exceed fifty (50) percent.

- (5) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a shoreland wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Shoreland Wetland.

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a shoreland wetland unless the structure requires direct access to the water body or shoreland wetland as an operational necessity.
- (6) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a shoreland wetland shall be converted to residential dwelling units in any district.
- (8) Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a shoreland wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

- D. Campgrounds. Campgrounds are only allowed in those zoning districts where they are listed as a permitted or conditional use. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:
- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting shoreland wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
 - (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a shoreland wetland.
- E. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:
- (1) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
 - (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a shoreland wetland.
 - (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
 - (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
 - (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
 - (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

F. Parking Areas

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in Districts other than the Downtown District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use in accordance with Section 9-629 and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or shoreland wetland and where feasible, to retain all runoff on-site.

G. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

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

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

Section G(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section G(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or shoreland wetland.
- (3) New roads and driveways are prohibited in a Resource Protection District

except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a shoreland wetland.

- (4) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section P.
- (5) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or shoreland wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a shoreland wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
 - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

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

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

(c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

(d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

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

H Signs. Signs shall conform to the requirements of Section 9-637.

I. Storm Water Runoff

(1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwater.

(2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

J. Septic Waste Disposal

(1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:
a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a shoreland wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

K. Essential Services

(1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection District or within seventy-five feet of Vaughan Brook or Bombahook Stream except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall

be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

- L. Mineral Exploration and Extraction. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) Mineral extraction is an allowed use in the District in which the parcel is located and a conditional use permit is obtained in accordance with section 9-614.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any water body, tributary stream, or the upland edge of a shoreland wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

- M. Agriculture

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance, of water bodies, tributary streams, or shoreland wetlands. All manure storage areas within the shoreland zone shall be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the Resource Protection or Shoreland Overlay District shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a

violation of this Ordinance.

- (4) There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, of water bodies and coastal shoreland wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and shoreland freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of water bodies and coastal shoreland wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater shoreland wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

N. Timber Harvesting – Statewide Standards

The provisions of this section except for Option 3 in subsection (3) become effective upon adoption of this section by the City Council and approval by the Commissioner of the Department of Environmental protection and shall be enforced by the City. Option 3 in subsection (3) shall become effective only if and when the statewide standards for timber harvesting established by 38 § 438-B become effective.

- (1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities shall take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and shoreland wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and shoreland wetlands occurs, such conditions shall be corrected.
- (2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a shoreland wetland. Section N(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
 - (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
 - (b) Adjacent to rivers and shoreland wetlands:

- (i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a shoreland wetland; and
 - (ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a shoreland wetland, all slash larger than 3 inches in diameter shall be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities shall leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following Option 1 or Option 2 below. In addition, this requirement may be satisfied by following Option 3 once the statewide timber harvesting standards have become effective:
- (a) Option 1 (40% volume removal), as follows:
 - (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, shall be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers and shoreland streams, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal shoreland wetland, there shall be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or upland edge of a shoreland wetland, timber harvesting and related activities shall not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they shall be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.
 - (b) Option 2 (60 square foot basal area retention), as follows:
 - (i) The residual stand shall contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre shall be greater than or equal to 4.5 inches DBH;

- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, shall be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of shoreland wetlands, there shall be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river upland edge of a shoreland wetland, timber harvesting and related activities shall not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they shall be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.
- (c) Option 3 (Outcome based), which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners shall designate on the Forest Operations Notification form required by 12 M.R.S.A. Chapter 805, subchapter 5 which option they choose to use. If a landowner chooses Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowner chooses Option 3, timber harvesting and related activities a may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

- (4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 - (a) Equipment used in timber harvesting and related activities shall not use river, shoreland stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 - (b) Skid trails and yards shall be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or shoreland wetland. Upon termination of their use, skid trails and yards shall be stabilized.

(c) Setbacks:

- (i) Equipment shall be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or shoreland wetland. On slopes of 10 percent or greater, the setback for equipment operation shall be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
- (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or shoreland wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or shoreland wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected.

(5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and shoreland freshwater wetlands, ditches and other related structures, shall be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or shoreland wetland. Surface water on or adjacent to water crossing approaches shall be diverted through vegetative filter strips to avoid sedimentation of the watercourse or shoreland wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips shall be established in accordance with the setback requirements in Section N(7) of this rule.

- (a) Land management roads and associated ditches, excavation, and fill shall be set back at least:
 - (i) 100 feet, horizontal distance, from the normal high-water line of a river or freshwater or coastal shoreland wetland;
 - (ii) 50 feet, horizontal distance, from the normal high-water line of shoreland streams; and
 - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams
- (b) The minimum 100 foot setback specified in Section N(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot

setback specified in Section N(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or shoreland wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or shoreland wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected by the property owner.

- (c) On slopes of 10 percent or greater, the land management road setback shall be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.
- (d) New land management roads are not allowed in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section N(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or shoreland wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or shoreland wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected.
- (f) Road closeout and discontinuance. Maintenance of the water control installations required in Section N(5)(e) shall continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

- (g) Upgrading existing roads. Extension or enlargement of presently existing roads shall conform to the provisions of Section N. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
 - (h) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of Section N(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or shoreland wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or shoreland wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected.
 - (i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, shoreland stream and tributary stream crossings shall take reasonable measures to avoid sedimentation of surface waters.
- (6) Crossings of waterbodies. Crossings of rivers, shoreland streams, and tributary streams shall allow for fish passage at all times of the year, shall not impound water, and shall allow for the maintenance of normal flows.
- (a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section N: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008.
 - (b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings shall conform to the provisions of Section N. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line shall conform to the provisions of Section N.
 - (c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, shoreland stream or tributary stream may

require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.

- (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of shoreland freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
- (e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas shall be given to the Bureau prior to the commencement of such activities. Such notice shall contain all information required by the Bureau, including:
 - (i) a map showing the location of all proposed permanent crossings;
 - (ii) the GPS location of all proposed permanent crossings;
 - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
- (f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section N(6)(g)) below. Shoreland streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
 - (i) concentrated water runoff does not enter the shoreland stream or tributary stream;
 - (ii) sedimentation of surface waters is reasonably avoided;
 - (iii) there is no substantial disturbance of the bank, or shoreland stream or tributary stream channel;
 - (iv) fish passage is not impeded; and,
 - (v) water flow is not unreasonably impeded.

Subject to Section N(6)(f)(i-v) above, skid trail crossings of shoreland streams and tributary streams when channels of such shoreland streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- (g) Bridge and Culvert Sizing. For crossings of river, shoreland stream and tributary stream channels with a bridge or culvert, the following requirements apply:

- (i) Bridges and culverts shall be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, shoreland stream, or tributary stream channel.
- (ii) Temporary bridge and culvert sizes may be smaller than provided in Section N(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures shall be at least as wide as the channel and shall be placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
 - 1. use of temporary skidder bridges;
 - 2. removing culverts prior to the onset of frozen ground conditions;
 - 3. using water bars in conjunction with culverts;
 - 4. using road dips in conjunction with culverts.
- (iii) Culverts utilized in river, shoreland stream and tributary stream crossings shall:
 - 1. be installed at or below river, shoreland stream or tributary stream bed elevation;
 - 2. be seated on firm ground;
 - 3. have soil compacted at least halfway up the side of the culvert;
 - 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 - 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
- (iv) River, shoreland stream and tributary stream crossings allowed under Section N, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), shall be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.
- (v) Exception. Skid trail crossings of tributary streams within shoreland areas and shoreland wetlands adjacent to such streams may be

undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and shoreland wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and shoreland wetlands occurs, such conditions shall be corrected.

- (h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
 - (i) Bridges and culverts installed for river, shoreland stream and tributary stream crossings by skid trails shall either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section N(6)(i) below.
 - (ii) Water crossing structures that are not bridges or culverts shall either be removed immediately following timber harvesting and related activities, or, if frozen into the river, shoreland stream or tributary stream bed or bank, as soon as practical after snowmelt.
 - (iii) River, shoreland stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams shall be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected.
- (i) Land management road closeout. Maintenance of the water control features shall continue until use of the road is discontinued and the road is put to bed by taking the following actions:
 - (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
 - (ii) Water crossing structures shall be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

(iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
2. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, shoreland stream or tributary stream channel; or
3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, shoreland stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions shall be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks shall be maintained as specified in Section N, but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent)	Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

O. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) In a Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.
- (2) Except in areas as described in Section O(1), above, and except to allow for the development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a shoreland wetland, a buffer strip of vegetation shall be preserved as follows:
 - (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is

not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

- (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section O(2)(b) a "well-distributed stand of trees" shall be defined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

Adjacent to water bodies, tributary streams, and shoreland wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots shall be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot shall be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points shall have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

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

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section O paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section O(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than seventy-five (75) feet, horizontal distance, from any water body, tributary stream or upland edge of a shoreland wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 1½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.

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

P. Erosion and Sedimentation Control

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- (a) Mulching and revegetation of disturbed soil.
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (c) Permanent stabilization structures such as retaining walls or rip-rap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.
- Q. Soils. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may

include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

- R. Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or shoreland wetland.

- S. Archaeological Site. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

[Derivation: Ord. No. 11-02b, effective 8/18/2011; Ord. No. 11-05, effective 10/21/2011; Ord. No. 12-10, eff. 10/19/2012]

SECTIONS 9-514 THROUGH 9-530 (Reserved)

DIVISION B - FLOODPLAIN MANAGEMENT DISTRICT (FM)

[Derivation: Ordinance Effective 2/10/92]

[Derivation: Ordinance No.: 03-22, Effective December 18, 2003]

[Derivation: Ordinance No.: 11-02a, Effective 5/19/2011; Ord. No. 11-06, Eff. 10/21/2011]

SECTION 9-531 PURPOSE AND ESTABLISHMENT (FM)

Certain areas of the City of Hallowell, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the City of Hallowell, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Code.

It is the intent of the City of Hallowell, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The City of Hallowell has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A., Sections 3001–3007, 4352 and 4401–4407 and Title 38 M.R.S.A., Section 440.

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

The areas of special flood hazard, Zones A and AE identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - City of Hallowell, Maine, Kennebec County" dated June 16, 2011 with accompanying "Flood Insurance Rate Map" dated June 16, 2011 with panels: 504, 511, 512, 514, 516, 517, 519 is hereby adopted by reference and declared to be a part of this Code.

SECTION 9-532 PERMIT REQUIRED (FM)

Before any construction or other development (as defined in Section 9-543), including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 9-531, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other building permits which may be required pursuant to the codes and ordinances of the City of Hallowell, Maine.

SECTION 9-533 APPLICATION FOR PERMIT (FM)

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

1. The name, address and phone number of the applicant, owner, and contractor;
2. An address and a map indicating the location of the construction site;
3. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
4. A statement of the intended use of the structure and/or development;
5. A statement of the cost of the development including all materials and labor;
6. A statement as to the type of sewage system proposed;
7. Specification of dimensions of the proposed structure and/or development;

[Subsections 8–11.B apply only to new construction and substantial improvements.]

8. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or to a locally established datum in Zone A only, of the:
 - A. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - (1) in Zone AE, from data contained in the "Flood Insurance Study - City of Hallowell, Maine, Kennebec County" as described in Section 9-531 or,
 - (2) in Zone A:
 - (a) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Section 9-536, subsection 11. And Section 9-538, subsection 4.
 - (b) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional

- engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
- (c) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- B. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - C. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - D. level, in the case of non-residential structures only, to which the structure will be flood proofed;
9. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section 9-536;
10. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
11. The following certifications as required in Section 9-536 by a registered professional engineer or architect:
- A. a Flood proofing Certificate (FEMA Form 81-65, 03/09, as amended), to verify that the flood proofing methods for any non-residential structures will meet the flood proofing criteria of Section 9-533, subsection 8.D.; Section 9-536, subsection 7.; and other applicable standards in Section 9-536.
 - B. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 9-536, subsection 12.B.(1).;
 - C. a certified statement that bridges will meet the standards of Section 9-536, subsection 13.;
 - D. a certified statement that containment walls will meet the standards of Section 9-536, subsection 14.;
12. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and

13. A statement of construction plans describing in detail how each applicable development standard in Section 9-536 will be met.

SECTION 9-534 APPLICATION FEE AND EXPERT'S FEE (FM)

A non-refundable application fee of \$50.00 shall be paid to the City Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the City submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

SECTION 9-535 REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS (FM)

The Code Enforcement Officer shall:

1. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 9-536 DEVELOPMENT STANDARDS have been, or will be met;
2. Utilize, in the review of all Flood Hazard Development Permit applications:
 - A. the base flood data and floodway contained in the "Flood Insurance Study - City of Hallowell, Maine, Kennebec County" as described in Section 9-531;
 - B. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Sections 9-533 subsection 8.A.(2); 9-536 subsection 11; and 9-538 subsection 4, in order to administer Section 9-536 of this Chapter; and,
 - C. when the community establishes a base flood elevation in a Zone A by methods outlined in Section 9-533 subsection 8.A.(2), the community shall submit that data to the Maine Floodplain Management Program in the Department of Conservation and Forestry.
3. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 9-531 of this Chapter;

4. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
5. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the Department of Conservation and Forestry prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
6. If the application satisfies the requirements of this Ordinance, approve the issuance of the following Flood Hazard Development Permits based on the type of development:
 - A. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Section 9-536 subsections 6, 7, or 8. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 - B. A Flood Hazard Development Permit for Floodproofing of Non- Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 9-536 subsection 7.A.(1), (2) and (3). The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 - C. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 9-536 subsection 10., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
7. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including

reports of the Board of Appeals on variances granted under the provisions of Section 9-539 of this Chapter, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Section 9-533, Section 9-536, and Section 9-537 of this Chapter.

[Derivation: Ord. No. 15-07, eff. 07/23/2015]

SECTION 9-536 DEVELOPMENT STANDARDS (FM)

All developments in areas of special flood hazard shall meet the following applicable standards:

1. All Development – All development shall:
 - A. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - B. use construction materials that are resistant to flood damage;
 - C. use construction methods and practices that will minimize flood damage; and
 - D. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
2. Water Supply – All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
3. Sanitary Sewage Systems – All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
4. On Site Waste Disposal Systems – On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
5. Watercourse Carrying Capacity – All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of any watercourse.
6. Residential – New construction or substantial improvement of any residential structure located within:
 - A. Zone AE shall have the lowest floor (including basement) elevated to at least

one foot above the base flood elevation.

- B. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Sections 9-533, subsection 8.A.(2); 9-535 subsection 2; or Section 9-538 subsection 4.
7. Non Residential – New construction or substantial improvement of any non-residential structure located within:
- A. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - (1) be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - (3) be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 9-533, subsection 11 and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 - B. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 9-533, subsection 8.A.(2); Section 9-535, subsection 2; or Section 9-538, subsection 4, or
 - (1) together with attendant utility and sanitary facilities meet the floodproofing standards of Section 9-536, subsection 7.A.
8. Manufactured Homes – New or substantially improved manufactured homes located within:
- A. Zone AE shall:
 - (1) be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - (2) be on a permanent foundation, which may be poured masonry slab

or foundation walls, with hydraulic openings, or may be reinforced piers of block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and

- (3) be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (a) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (b) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (c) all components of the anchoring system described in Section 9-536, subsection 8.A.(3)(a) & (b) shall be capable of carrying a force of 4800 pounds.

B. Zone A shall

- (1) be elevated on a permanent foundation, as described in Section 9-536, subsection 8.A.(2)., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Section 9-533, subsection 8.A.(2).; Section 9-535, subsection 2.; or Section 9-538, subsection 4.; and:
- (2) meet the anchoring requirements of Section 9-536, subsection 8.A.(3).

9. Recreational Vehicles – Recreational vehicles located within:

A. Zone A and AE shall either:

- (1) be on the site for fewer than 180 consecutive days,
- (2) be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- (3) be permitted in accordance with the elevation and anchoring requirements for “manufacturing homes” in Section 9-536, subsection 8.A.

10. Accessory Structures – Accessory structures, as defined in Section 9-543, located within Zones AE and A, shall be exempt from the elevation criteria required in Section 9-536, Subsection 6 & 7 above, if all other requirements of Section 9-536 and all the following requirements are met. Accessory Structures shall:
 - A. be 500 square feet or less and have a value less than \$3000.;
 - B. have unfinished interiors and not be used for human habitation;
 - C. have hydraulic openings, as specified in Section 9-536, subsection 12.B., in at least two different walls of the accessory structure;
 - D. be located outside the floodway:
 - E. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
 - F. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

11. Floodways:
 - A. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's digital Flood Insurance Rate Map, Kennebec County unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - B. In Zones AE and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section 9-536, subsection 11.C. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - (1) will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - (2) is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study – Guidelines and Specifications for Study Contractors*, (FEMA 37/January 1995 as

amended).

- C. In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
12. Enclosed Areas Below the Lowest Floor – New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of Section 9-536, including the elevation requirements of Section 9-536, subsections 6, 7 or 8, and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded.
- A. Enclosed areas are not "basements" as defined in Section 9-543;
 - B. Enclosed areas 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:
 - (1) be engineered and certified by a registered professional engineer or architect; or,
 - (2) meet or exceed the following minimum criteria:
 - (a) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (b) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (c) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.
 - C. The enclosed area shall not be used for human habitation; and
 - D. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
13. Bridges – New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:

- A. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and
 - B. a registered professional engineer shall certify that:
 - (1) the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section 9-536, subsection 11.; and
 - (2) the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
14. Containment Walls – New construction or substantial improvement of any containment wall located within:
- A. Zones AE and A shall:
 - (1) have the containment wall elevated to at least one foot above the base flood elevation;
 - (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (3) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 9-533, subsection 11.
15. Wharves, Piers and Docks – New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, in and over water and seaward of the mean high tide if the following requirements are met:
- A. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
 - B. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

SECTION 9-537 CERTIFICATE OF COMPLIANCE (FM)

No land in a special flood hazard area shall be occupied or used and no structure which is

constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

1. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Section 9-536, subsection 6, 7, or 8.
2. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
3. Within 10 working days, the Code Enforcement Officer shall:
 - A. review the Elevation Certificate and the applicant's written notification; and,
 - B. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

SECTION 9-538 REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS (FM)

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

1. All such proposals are consistent with the need to minimize flood damage.
2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
3. Adequate drainage is provided so as to reduce exposure to flood hazards.
4. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
5. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Section 9-536 of this Chapter. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

SECTION 9-539 APPEALS AND VARIANCES (FM)

The Board of Appeals of the City of Hallowell may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Chapter.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

1. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
2. Variances shall be granted only upon:
 - A. a showing of good and sufficient cause; and,
 - B. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - C. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - D. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - (1) that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - (2) that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - (3) that the granting of a variance will not alter the essential character of the locality; and,
 - (4) that the hardship is not the result of action taken by the applicant or a prior owner.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.

4. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - A. other criteria of Section 9-539 and Section 9-536, subsection 11. are met; and
 - B. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
5. Variances may be issued for the repair, reconstruction, or restoration of Historic Structures upon the determination that:
 - A. the development meets the criteria of Section 9-539, subsections 1 through 4 above; and,
 - B. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
6. Any applicant who meets the criteria of Section 9-539, subsections 1 through 5 shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 - A. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - B. such construction below the base flood level increases risks to life and property; and,
 - C. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
7. Appeal Procedure for Administrative and Variance Appeals
 - A. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 - B. Upon being notified of an appeal, the Code Enforcement Officer or Planning

Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

- C. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
- D. The person filing the appeal shall have the burden of proof.
- E. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
- F. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
- G. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to the Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

SECTION 9-540 ENFORCEMENT AND PENALTIES (FM)

- 1. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- 2. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Chapter.
- 3. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:
 - A. the name of the property owner and address or legal description of the property sufficient to confirm its identify or location;
 - B. a clear and unequivocal declaration that the property is in violation of a cited State or local law, or ordinance;
 - C. a statement that the public body making the declaration has authority to do so and a citation to that authority;
 - D. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,

- E. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

SECTION 9-541 VALIDITY AND SEVERABILITY (FM)

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

SECTION 9-542 CONFLICT WITH OTHER ORDINANCES (FM)

This Division B Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Division B Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Division B Ordinance shall control.

SECTION 9-543 DEFINITIONS (FM)

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Division B Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

1. Accessory Structure – means a small detached structure that is incidental and subordinate to the principal structure.
2. Adjacent Grade – means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
3. Area of Special Flood Hazard – means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 9-531 of this Ordinance.
4. Base Flood – means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.
5. Basement – means any area of the building having its floor subgrade (below ground level) on all sides.
6. Building – see Structure.
7. Certificate of Compliance – a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.
8. Code Enforcement Officer – a person certified under Title 30-A MRSA Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and

ordinances.

9. Development – means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.
10. Elevated Buildings – means a non-basement building
 - A. built, in the case of a building in Zones AE or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
 - B. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones AE or A, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Section 9-536, subsection 12.

11. Elevation Certificate – an official form (FEMA Form 81-31, 03/09, as amended) that:
 - A. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
 - B. is required for purchasing flood insurance.
12. Flood or Flooding – means:
 - A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph A.(1) of this definition.
13. Flood Elevation Study – means an examination, evaluation and determination of

flood hazards and, if appropriate, corresponding water surface elevations.

14. Flood Insurance Rate Map (FIRM) – means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
15. Flood Insurance Study – see Flood Elevation Study.
16. Floodplain or Flood-prone Area – means any land area susceptible to being inundated by water from any source (see Flooding).
17. Floodplain Management – means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
18. Floodplain Management Regulations – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
19. Floodproofing – means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.
20. Floodway – see Regulatory Floodway.
21. Floodway Encroachment Lines – means the lines marking the limits of floodways on federal, state, and local floodplain maps.
22. Freeboard – means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.
23. Functionally Dependent Use – means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
24. Historic Structure – means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
 - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
25. Locally Established Datum – means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.
26. Lowest Floor – means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design Requirements described in Section 9-536, subsection 12. of this Chapter.
27. Manufactured Home – means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.
28. Manufactured Home Park or Subdivision – means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

29. Mean Sea Level – means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
30. Minor Development – means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section 9-536, subsection 10., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.
31. National Geodetic Vertical Datum (NGVD) – means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.
32. New Construction – means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.
33. North American Vertical Datum (NAVD) – means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.
34. 100-year flood – see Base Flood.
35. Recreational Vehicle – means a vehicle which is:
 - A. built on a single chassis;
 - B. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
 - C. designed to be self-propelled or permanently towable by a motor vehicle; and
 - D. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

36. Regulatory Floodway –
- A. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
 - B. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.
37. Riverine – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
38. Special Flood Hazard Area – see Area of Special Flood Hazard.
39. Start of Construction – means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.
40. Structure – means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.
41. Substantial Damage – means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
42. Substantial Improvement – means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of

the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
 - B. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.
43. Variance – means a grant of relief by a community from the terms of a floodplain management regulation.
44. Violation – means the failure of a structure or development to comply with a community's floodplain management regulations.

SECTION 9-544 ABROGATION (FM)

This Division B Ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

SECTIONS 9-545 THROUGH 9-550 (Reserved)

DIVISION C - HISTORIC DISTRICT (HD)

SECTION 9-551 PURPOSE (HD)

The purpose of the Historic District and the designation of Historic Landmarks is to preserve structures and areas of historic and architectural value and as declared by the City Council under the provisions of Sub-Chapter V of Chapter 8 of this Code.

SECTION 9-552 DESCRIPTION (HD)

1. Historic District:
- A. The Historic District (HD) shall generally include the land area bounded as follows: easterly by the Kennebec River; southerly by the south and west lines of Lot 26, Water Street, by the south and east lines of lot 29, by Bridge Street, and by the south line of lot 30 all as shown on Tax Map 10, by Second Street, and by Litchfield Road; westerly by the west line of the lots that front on the west side of Middle Street on Tax Map 11 and on Tax Map 9 from Litchfield Road to Academy Street, excepting lot 1 on Tax Map 11, and lot 10A on tax Map 9, by Academy Street, by the west line of the lots that front on the west line of Warren Street from Academy Street to Central

Street, by Central Street, by the west line of lot 66A, lot 66, and lot 41, by the south and west line of lot 44 all as shown on Tax Map 6, by Winthrop Street, and by the west line of lot 28, lot 32, lot 33, lot 34, and lot 35 all as shown on Tax Map 6; northerly by Getchell Place, by the north and east line of lot 125, by the east line of lot 126, by the north line of lot 82, all as shown on Tax Map 5, by the north line of the lots that front on the north line of Lincoln Street, by the north line of lot 95 on Tax Map 5, by Second Street, by the north line of Maine Central Railroad, by the east line of Water Street, by the north line of lot 172 and lot 182, as shown on Tax Map 5, and by the north line of lot 182 extended easterly.

- B. The Historic District (HD) shall specifically include the areas shown on Tax Map 10, except lots 27, 28, and 31; all of the lots shown on Tax Map 9, except lots 9A through 13, 16 through 24, 28, and 29; all of the lots shown on Tax Map 5, except lots 87, 96 through 124, 128 through 130, 158 through 159A, 160 through 165A, 166 through 170, 180, 181, and the Maine Central Railroad land east of the line of Water Street; only the lots designated as 2 through 18 on Tax Map 11; and only the lots designated as 28 through 35, 39 through 44, and 66 through 68 on Tax Map 6.

[Derivation: Ordinance No.: 06-01, Effective: 3./23/2006]

2. Historic Landmarks. Historic Landmarks are designated as follows:

- A. The Powder House located at High Street, and within lot 53 on Tax Map 6.

SECTION 9-553 DEFINITIONS (HD)

The following enumerated words and terms as used in this Division C shall have the meaning ascribed herein, unless the context otherwise indicates.

1. Addition. Any proposed change which increases the size of a building.
2. Alteration. Any proposed change to buildings or structures which would alter or affect any exterior architectural feature.
3. Exterior Architectural Features. Elements of a building's outside appearance including but not limited to, architectural character; general composition and general appearance of exterior siding; exterior trim; change in size of door and window openings; roofs; porches; signs; fire escapes and accessory buildings; and solar facilities.
4. Historic District. An explicitly delineated area within the City, designated by the City Council as a Historic District under the provision of Subchapter V of Chapter 8 of this Code and as described in Section 9-552.
5. Historic Landmark. A building, structure, or site officially designated as a Historic

Landmark by the City Council under the provisions of Subchapter V of Chapter 8 of this Code. A Historic Landmark may be located within a Historic District.

6. New Construction. Any construction requiring a building permit or sign permit.
7. Public Improvements. Works of governmental units and public utilities, including but not be limited to, lighting, sidewalks, street furniture, overhead utilities, buildings, tree planting programs, street signs, traffic lights, and bus stops and shelters.

[Derivation: Section 10.2, 1989 Zoning Ordinance]

SECTION 9-554 APPLICATION (HD)

1. Any owner or person in charge of property designated as a Historic Landmark or situated within a Historic District must apply for and receive a Historic District Certificate of Appropriateness on the relevant building permit, prior to undertaking of any construction, alteration, addition, relocation, demolition or other activity which would result in an exterior architectural change to any property, including any structure, public rights of way improvements, or street lighting, which is part of a designated Historic Landmark or located within a designated Historic District. Such certification must also be obtained prior to undertaking the construction of any new structure in a Historic District. Any such certification shall be obtained before any building, removal, demolition, or other similar City permit is issued.
2. This Division C shall apply to municipal, quasi-municipal and county governments and their agencies. This Division C also applies to private non-profit organizations and public-service corporations regardless of their exemption from any other municipal ordinance to the extent that general law permits.
3. No building permit or demolition permit shall be issued for any property designated as a Historic Landmark or any property located within a Historic District unless a Certification of Planning Board Approval has been previously issued with respect to same property and subject matter as the required permit.
4. The Code Enforcement Officer shall not approve any application for a building permit or demolition permit with respect to any property within a Historic District or to any Historic Landmark, that is materially different than the copy of the building or demolition permit application submitted with the application for Certificate of Planning Board Approval. All such building or demolition permits are conditioned upon compliance with any conditions set forth in the Certificate of Planning Board Approval and all plans and representations in the application approved by the Planning Board.

[Derivation: Sections 10.8(4) and 10.9, 1989 Zoning Ordinance]

5. The Historic District Certificate of Appropriateness Application Fee is \$25.00.

[Derivation: Ordinance No.: 05-10 Effective November 18, 2005]

6. The Planning Board may require that an engineer, attorney or consultant review one or more aspects of an application for compliance with this Ordinance or to conduct independent studies or testing, and to advise the Board. It is intended that such review shall be requested only where there may be serious questions concerning methodologies, practices, opinions, or scientific principles presented by the applicant or its experts to meet its burden of proof. The engineer, attorney or consultant shall first establish the maximum cost of such review by written agreement with the City. The applicant shall then deposit with the City an amount equal to the full maximum cost, which the City shall place in an escrow account. The City shall pay the engineer, attorney or consultant from the escrow account and reimburse any remaining balance to the applicant, after final payment. Any interest accrued shall remain with the City.

[Derivation: Ordinance 07-01; Effective March 22, 2007]

SECTION 9-555 APPLICATION FORM (HD)

All applications for a certification of Planning Board approval shall be made to the Planning Board. Where additional building permits are required, application will be made concurrently to the Code Enforcement Officer.

The application shall include the following information:

1. Applicant's name, address and interest in the subject property.
2. The owner's name, address, if different from applicant.
3. The address and location of the property.
4. A brief written description of the action desired to be undertaken with respect to the property.
5. A drawing or drawings indicating the design, texture, color and location of any proposed alteration or new construction for which the Certificate is being applied. As used herein, drawings shall mean plans and exterior elevations drawn to scale, with sufficient detail to show as far as they relate to exterior appearances, the architectural design of the buildings, including materials, textures and colors, including samples of materials and colors.
6. Photographs of the property involved and adjacent property if requested by Planning Board or Code Enforcement Officer.
7. A copy of each completed and executed application for a building permit with respect to the property and the proposed construction, alteration, addition, relocation, demolition, or architectural change thereon. Such additional materials as the Board

may reasonably require.

[Derivation: Section 10.10, 1989 Zoning Ordinance; Ord. No. 00-2, effective 1/20/2000]

SECTION 9-556 APPROVAL OR DENIAL BY THE PLANNING BOARD (HD)

The Planning Board shall render its decision within sixty (60) days after the Planning Board accepts a complete application for certification. The Board shall render its decision in the form of a written statement either granting, denying, or granting with conditions, a certification of the Planning Board approval. Such a statement shall include findings of fact, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact which shall grant approval, conditional approval subject to expressly stated modifications or conditions, or shall deny approval. In the case of an approval, the Board shall specifically describe the particular exterior change which is authorized by the certification including a specific enumeration of any conditions imposed. In the case of a denial, the Board shall, if possible, make recommendations and suggest ways of satisfying its adopted standards. The City Manager shall mail notice of any decision of the Board to the appellant or the applicant and any designated interested parties within ten (10) business days of such decision.

[Derivation: Section 10.11, 1989 Zoning Ordinance]

SECTION 9-557 AMENDMENT OF APPLICATION (HD)

In the event of a denial, an applicant may amend the application to conform to the Planning Board's recommendations and resubmit it by the same procedure as the original submission.

[Derivation: Section 10.12, 1989 Zoning Ordinance]

SECTION 9-558 CRITERIA FOR CERTIFICATION OF PLANNING BOARD APPROVAL FOR NEW CONSTRUCTION IN HISTORIC DISTRICT (HD)

The following standards and requirements and the standards contained in the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be used in review of applications for Certificates of Approval. Design considerations and structural factors related to maintaining historic structures in good condition shall be the Planning Board's primary area of focus.

1. General Recommendations:

- A. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
- B. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided

when possible.

- C. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.
 - D. Changes that may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 - E. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
 - F. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
 - G. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
 - H. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
 - I. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
 - J. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
2. Visual Compatibility. New and existing buildings and structures, and appurtenances thereof, that are moved, reconstructed, materially altered, or repaired shall be visually compatible in terms of:
- A. Height. The height of the proposed buildings and structures shall be visually compatible with adjacent buildings.

- B. Proportion of front facade. The relationship of the width to the height of the front elevation shall be visually compatible with buildings, public ways, and places to which it is visually related.
- C. Proportion of openings. The relationship of the width to height of windows shall be visually compatible with buildings, public ways, and places to which the building is visually related.
- D. Rhythm of solids to voids in front facades. The relationship of solids to voids in the front facade of a building shall be visually compatible with buildings, public ways, and places to which it is visually related.
- E. Rhythm of spacing and buildings on streets. The relationship of a building or structure to the open space between it and adjoining buildings or structures shall be visually compatible with the buildings, public ways, and places to which it is visually related.
- F. Rhythm of entrance porch and other projections. The relationship of entrances and other projections to sidewalks shall be visually comparable with the buildings, public ways, and places to which it is visually related.
- G. Relationship of materials, texture, and color. The relationship of the materials, texture and color of the facade shall be visually compatible with the predominant materials used in the buildings and structures to which it is visually related.
- H. Roof shapes. The roof shape of a building shall be visually compatible with the buildings to which it is visually related.
- I. Walls of continuity. Building facades and appurtenances, such as walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street, to ensure visual compatibility with the buildings, public ways, and places to which such elements are visually related.
- J. Scale of a building. The size and mass of buildings and structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the buildings, public ways, and places to which they are visually related.
- K. Directional expression of front elevation. A building shall be visually compatible with the buildings, public ways, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character, or non directional character.
- L. Exterior lighting. (Reserved)

[Derivation: Section 10.13, 1989 Zoning Ordinance]

SECTION 9-559 (Reserved)

SECTION 9-560 CRITERIA FOR CERTIFICATION OF PLANNING BOARD APPROVAL FOR DEMOLITION OR REMOVAL OF HISTORIC LANDMARKS OR BUILDINGS IN HISTORIC DISTRICT (HD)

A certification of Planning Board approval shall not be issued for the whole or partial demolition or removal of an Historic Landmark or a structure which is located in an Historic District unless such is found by the Board to conform to one or more of the following criteria:

1. The structure is of limited architectural or historic value as part of the visual character of the street on which it is located.
2. The structure presents an immediate hazard and a possibility of harm to the neighborhood.

[Derivation: Section 10.14, 1989 Zoning Ordinance]

SECTION 9-561 CERTIFICATION OF PLANNING BOARD APPROVAL: TRANSFERABILITY AND LAPSE (HD)

Certification of Planning Board approval shall be non-transferable and shall lapse and be of no effect if the activity permitted shall not have commenced within one (1) year from the date of issuance.

[Derivation: Section 10.15, 1989 Zoning Ordinance]

SECTION 9-562 EXEMPTIONS (HD)

1. Ordinary Maintenance Permitted. Nothing in this Division C shall be construed to regulate or prevent the ordinary maintenance or repair of any exterior feature in an Historic District or of any City Landmark which does not involve a change in the design, material, or outer appearance.
2. Safety. Nothing in this Division C shall prevent the construction, reconstruction, alteration, restoration, or demolition of any feature which the Code Enforcement Officer shall certify is required by the public safety because of an unsafe or dangerous condition, but any such action shall be, where possible, in accordance with the criteria set forth in this Chapter.
3. Handicapped Accessibility. Nothing in this Division C shall be construed to prevent construction or reconstruction necessary to make a building accessible to handicapped persons, to the extent required by statute. Any such construction or reconstruction shall conform as closely as possible to the criteria and performance

standards set forth in this Chapter.

[Derivation: Section 10.16, 1989 Zoning Ordinance]

SECTION 9-563 ENFORCEMENT (HD)

Permits. No building, removal or demolition permit shall be issued for any property designated as an Historic Landmark or located within an Historic District unless a certification of Planning Board approval shall have been issued for the action for which the permit is required.

[Derivation: Section 10.17, 1989 Zoning Ordinance]

SECTION 9-564 MAINTENANCE AND REPAIR REQUIRED (HD)

1. PURPOSE: The purpose of this Section is to prevent the deterioration of all buildings that abut Water Street in the Historic District, hereinafter referred to as “designated area”, by requiring that such buildings be enclosed so that the interiors are protected from the elements of the weather.
2. REQUIREMENTS: An owner or the agent of the owner in charge of a building within the designated area shall protect the building from falling into a state of disrepair or deterioration so that the interior of the building is not protected from the elements of the weather.

Evidence of deterioration and disrepair include but is not limited to any or all of the following: holes, cracks and gaps in exterior walls, roofs, chimneys and foundations; and broken or missing windows and doors.

In evaluating a building for compliance with this Section, the Code Enforcement Officer shall use the definitions in Sections 9-151 and 9-553.

3. INSPECTION: The Code Enforcement Officer may visually inspect the building from the inside and the outside in order to ensure compliance with the ordinance.

[Derivation: Ord. No. 15-08, eff. 9/18/2015]