

**KENNEBUNK  
TOWN ORDINANCES**

As Amended Through

**JUNE 14, 2016**

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Filed Under Separate Cover

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# Ordinances of the Town of Kennebunk

## SECTION 1

**THE TOWN ZONING ORDINANCE IS FILED UNDER  
SEPARATE COVER**

## **SECTION 2**

### **ORDINANCES RELATING TO ROADWAYS, RIVERS, TRAFFIC**

## 2-1 PROHIBITED PARKING

1.1 It shall be unlawful for the owner or operator of any vehicle to park, leave standing, either attended or unattended, any vehicle, commercially or privately owned, at any time, on any of the foregoing sections of ways and roads of the Municipality of Kennebunk:

### (A) Beach Area:

- a) **Bayberry Avenue:** On the southerly side extending from Beach Avenue to Pleasant Avenue and on the northerly side extending from Pleasant Avenue to Peninsula Drive. (ADOPTED 10-10-1995)
- b) **Boothby Road:** On the westerly side from Beach Avenue to Woodland Ave.
- c) **Bruen Place:** On the easterly side.
- d) **Evergreen Avenue:** On the northeasterly side extending from Bayberry Avenue to Peninsula Drive.
- e) **Fort Lane:** On both sides.
- f) **Great Hill Road:** On both sides except that parking is permitted 1) off the paved road in the Town right-of-way and 2) within fifty (50) feet of the paved dead end adjacent to Mousam River. (06-21-2011)
- g) **Grove Avenue:** On the easterly side.
- h) **Harris Lane:** On the easterly side.
- i) **Marshview Avenue:** On the southwesterly side from Bayberry Avenue to Peninsula Drive.
- j) **Oak Street:** On both sides.
- k) **Peninsula Drive:** On the southwesterly side extending from Beach Avenue to Evergreen Avenue.
- l) **Railroad Avenue:** On the westerly side.
- m) **Ridge Avenue:** On the westerly side.
- n) **Ridge Lane:** On both sides.

o) **Surf Lane:** On the southwesterly side extending from Bayberry Avenue to Peninsula Drive and on the easterly side from Beach Avenue to Bayberry Avenue.

p) **Valley Avenue:** On both sides.

q) **Woodland Avenue:** On both sides.

Any person, firm or corporation who violates 2-1.1 A, upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. Any person accused of a violation may settle and compromise the claim against them for such illegal parking by paying the Municipality the fee as set by the Board of Selectmen's fee schedule; such payment may be made at the Police Station within 7 days of the time such alleged violation was committed. (09-12-1989; 06-12-02)

**B) Beach Avenue:** From a point at the easterly end of the present parking space to Harris Road, so called, on either side, and from Gooch's Creek Bridge to the easterly end of the existing town parking lot at Kennebunk Beach along the northwesterly side and on any properly marked crosswalks in the Kennebunk Beach area. (06-26-1969)

**B-a) Beach Avenue:** From the intersection of Western Avenue (State Highway 9) to Gooch's Creek Bridge on the southerly side of the street. From the intersection of Western Avenue (State Highway 9) to 28 Beach Ave. (Franciscan Monastery) on the northerly side of the street. (10-26-1982; 07-10-2007; 06-21-2011)

Any person, firm or corporation who violates 2-1.1.B or 2-1.1.B-a, upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule with costs to be used by the Municipality of Kennebunk. Any person accused of a violation may settle and compromise the claim against them for such illegal parking by paying the Municipality the fee as set by the Board of Selectmen's fee schedule; such payment may be made at the Police Station within seven (7) days of the time such alleged offense was committed. (07-23-1985; 06-12-02; 06-21-2011)

**C) Berry Court:** On the southerly side from the intersection with Storer St. extending southwesterly 118'. (08-12-1986)

**D) Brown Street:** From Main Street a distance of 50' on either side of the street. (06-29-1956)

**E) Chase Hill Road:** On both sides of the street and on any paved Town surface. (1-11-2011; 06-21-2011)

**F) Dane Street:** From Main Street to Park Street on the southerly (Park Street Playground) side. From Main Street for a distance of thirty (30) feet on the northerly side. (06-29-1956; 07-26-1983; 06-21-2011)

**G) Day Street:** On the easterly side of Day Street from intersection of Swan Street to intersection of Hall Street. (02-14-1989)

**H) Elm Street:** From Summer Street to Green Street on either side of the street. (06-29-1956)

**I) Fletcher Street:** From Main Street for a distance of 25' on the southwesterly (Civil War Monument) side, and from Main Street for a distance of 20' on the northeasterly (Kennebunk Library) side. (02-17-1970)

**J) Friend Street:** From York Street (US Route 1) to Brown Street on either side of the street. (03-03-1966)

**K) Garden Street:** On the southerly side for a distance extending 50' from the Main St. intersection. On both sides within 20' of the nearest line of any crosswalk, marked or unmarked, and/or within 20' of the nearest line of all street intersections, except where prohibited for a greater distance. (08-12-1986)

**L) Green Street:** From within 40' of Main Street (Portland Road) on the northeasterly (Town Hall) side, and from Main Street to a point 129' along Green Street on the southwesterly (Christ Church) side. And from a point between 185' to 218' from Main Street on the northwesterly (adjacent to Town Hall entrance) side. (10-14-2014)

Handicapped Parking: That two handicapped parking spaces be established on the southwesterly side of Green Street among the existing parking spaces which begin 195' from Main Street, on the southwesterly (Christ Church) side. (10-09-1990)

**M) Grove Street:** From Main Street to first residential driveway on either side of the street. (06-29-1956)

**N) High Street:** From Main Street a distance of 50' on the right hand side. (06-29-1956)

**O) Lords Point Road:** From a point 66' southwesterly of CMP pole #604J1 on the westerly side, and from a point located 38' northerly of CMP pole #604J2 to a point located 194' northerly of CMP pole #604J2 on the easterly side, and at the traffic island at the intersection of Beach Street. (09-14-1982)

Any person, firm or corporation who violates 2-1.1.L upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. Any person accused of a violation

may settle and compromise the claim against them for such illegal parking by paying the Municipality the fee as set by the Board of Selectmen's fee schedule; such payment may be made at the Police Station within 7 days of the time such alleged offense was committed. (07-23-1985; 6-12-02)

**P) Main Street:** (US Route 1) From Friend Street to a point 30' beyond the intersection of Storer Street and Water Street on either side, and from the intersection of Fletcher Street for a distance of 350' north along the west (Kennebunk Library) side, and from the intersection of Dane Street for a distance of 35' north along the east (Brick Store) side, and from the main entrance of Hope Cemetery for a distance of 180', south toward the Unitarian Church, and within 20' of the nearest line of any crosswalk, marked or unmarked, and within 20' of the nearest line of all street intersections, unless otherwise specified. (06-29-1956; 02-17-1970)

**Q) Park Street:** From the intersection of Dane Street for a distance of 50' southerly on the westerly side (Park Street Playground). (07-26-1983)

**Q-a) Park Street:** On the northwesterly side extending from its intersection with Dane Street to the Summer Street intersection. (10-09-1990)

**R) Parsons Beach Road:** From the intersection of State Highway 9 to a point 415' north of Stoney River Bridge on either side. (06-21-1976)

**S) Parsons Street:** On both sides of the southerly end of Parsons Street within 20' of the crosswalk which runs parallel to Garden St. (08-12-1986)

**T) Pleasant Street:** On the northerly side for the entirety of the street. From Main Street a distance of one-hundred (100) feet on the southerly side. (11-27-1979; 06-21-2011)

**U) Plummer Street:** On the northerly side of Plummer Street, beginning at the NET Pole #1026-8 extending 200' in an easterly direction and 135' in a westerly direction. (06-23-1992)

**V) Post Office Square:** On both sides. (05-24-11)

**W) Route 35:** From the intersection of Route 9 a distance of 150' westerly on both sides. (10-26-1982)

Beginning 150' westerly from the intersection of Rt. 9 to a point 525' westerly from the intersection of Rt. 9, parallel parking only will be allowed on the west side. (07-09-1985; 07-10-2007)

From Port View Road (so called) to Utility Pole #J14 on the north side. (07-09-1985)

From Utility Pole #J11 to Port View Road (so called) on the north side. (07-09-1985)

**X) Route 99:** From the town boundary of Sanford and Kennebunk for a distance of 2.7 miles on either side. (09-02-1982)

**Y) Storer Street:** On the Northeast side of the street, from the Main Street Intersection to the Garden Street Intersection, from Verizon Pole #2 to Verizon Pole #5, from Verizon Pole #7 to Verizon Pole #8, from Verizon Pole #9 to Verizon Pole # 11, from Verizon Pole #14 to the Fletcher Street Roundabout. On the Southwest side of the street from the Fletcher Street Roundabout to Sayward Street, unpaved areas of the Town of Kennebunk Right of Way between Sayward Street and Berry Court, Verizon Pole #1 - 2 to the Main Street Intersection. On both sides within 20' of the nearest line of any marked crosswalk, and/or within 20' of the nearest line of all street intersections, except where prohibited for a greater distance. (09-25-2007)

**Z) Summer Street:** On the northern side beginning at the westernmost driveway of the Kennebunk Police Station (4 Summer Street) extending westerly to the Portland Road intersection then continuing northerly for a total distance of 430'. (10-10-1989)

**Z-A) Summer Street:** On the southern side beginning at the Green St. intersection extending easterly for a distance of one-hundred-and-twenty-eight (128) feet and on the southern side from the Park St. intersection to the Depot St. intersection (10-10-1989; 06-21-2011)

One "No Parking" sign shall be placed on the utility pole, which is on the easterly side of the driveway to 14 Summer Street. This sign would be to restrict parking from the location of said utility pole for a distance of 43' east to the driveway of 16-18 Summer Street.

The beginning point shall be the west side of the driveway at 14 Summer Street and continuing 20' in a westerly direction to restrict parking in that area. (06-12-1984)

**AA) Thompson Road.** On both sides from its intersection with the Alfred Road to a point 150 feet northeast of the northerly most point of the Town owned land as shown on Tax Map 36, Lot 9A. (Adopted 11-27-2001)

**BB) Western Avenue Opposite Rotary Park -- Lower Village Parking Ordinance:** On the northerly side of Western Avenue/ Main St., (Route 9) from the Kennebunk River Bridge westerly for a distance of three-hundred-and-thirty-two (332) feet; and on both sides of Beach Avenue one-hundred-and-seventy (170) feet from the intersection of Routes 35 & 9; one hundred (100) feet westerly of the Route 35 & 9 intersection on the north side of Western Avenue; and on the southerly side of Western Avenue from the Kennebunk River bridge westerly to Lake Brook. (07-24-1984; 06-09-1992; 07-10-2007; 06-21-2011)

The fact that an automobile, which is illegally parked, is registered in the name of the person shall be considered prima facie proof that such person was in control of the automobile at the time of the parking.

Any person, firm or corporation who violates any provision of this ordinance, shall, upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. (6-12-02)

Any person accused of a violation may settle and compromise the claim against him or her for such illegal parking by paying the Municipality the fee as set by the Board of Selectmen's fee schedule; such payment may be made at the Police Station within 7 days of the time such alleged offense was committed. (10-26-1982; 06-12-02)

**CC) Western Avenue/Parsons Beach:** On the south side of Route 9 Western Ave., from the Parsons Beach intersection, extending 15' easterly.  
On the south side of Route 9 Western Ave., from a point 160' east of the Parsons Beach Road intersection extending 90' easterly.

On the south side of Route 9 Wells Road, from Parsons Beach Road intersection, extending 25' westerly.

On the north side of Western Ave., from the westerly most Brown St. intersection extending to the easterly most Brown St. intersection. (09-27-1983)

**DD) Winter Street:** On both sides. (06-21-2011)

All other areas shall be marked with signage or painted curbing.

Within twenty (20) feet of all intersections with roads, including fire lanes and private roads. Distance shall be measured from the projected edge of the paved or gravel road surface on each side of the intersecting road. (06-21-2011)

Within ten (10) feet of all driveway entrances and directly across the roadway from any driveway entrance. (06-21-2011)

**1.2** The fact that an automobile, which is illegally parked, is registered in the name of the person shall be considered prima facie proof that such person was in control of the automobile at the time of such parking. (01-26-1971)

**1.3** Any person, firm, or corporation who violates any provision of Section 2-1 upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. (01-26-1971; 06-12-02)

**1.4** Any person accused of a violation may settle and compromise the claim against him or her for such illegal parking by paying the Municipality the fee as set by the Board of Selectmen's fee schedule; such payment may be made at the Police Station within 7 days of the time such alleged offense was committed. (01-26-1971; 06-12-02)

**1.5** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-02)

**1.6** Special Events. The Town Manager or designee may declare a temporary no-parking zone or allow for temporary parking in a previously designated no-parking zone to accommodate special events approved by the Board of Selectmen, including but not limited to parades, special sporting events, public concerts, and fireworks displays. Such designation shall be marked with a placard or similar temporary signage in the affected area(s). For any such temporary parking re-designation to last more than twenty-four (24) hours, written notice shall also be provided to the abutting property owners; for any such temporary parking re-designation to last twenty-four (24) hours or less, notice shall also be posted on the Town's website. (06-21-2011)

**1.7** [Left blank intentionally]

**1.8** [Left blank intentionally]

**1.9** [Left blank intentionally]

**1.10** Amendment Process. Effective July 1, 2007, exclusive authority for all amendments to Section 2-1, 2-2, and 2-3 of the Roadways and Traffic Ordinance, including repealing or totally revising the same, including fines and penalties, shall be vested in the municipal officers; provided, however, any such changes or amendments shall be preceded by notice in a newspaper of general circulation in town at least seven (7) days in advance of a public hearing to be held by the municipal officers on the same.

**Dates of passage and amendment occur after each roadway.**

## 2-2 LIMITED PARKING

2.1 The following sections of ways and roads in Kennebunk are limited to parking in the manner, ways and times specified:

**A) Beach Avenue:** It shall be unlawful for the owner or operator of any vehicle to park, leave standing, either attended or unattended, any vehicle, commercially or privately owned, on Beach Avenue from its intersection with Great Hill Road to its intersection with Gooch's Creek Bridge between the hours of 11:00 P.M. and 6:00 A.M. Any person, firm or corporation who violates any provision of this section (2-2.1. A), upon conviction shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. (03-28-1989; 06-12-02)

**B) Christensen Lane:** It shall be unlawful for the owner or operator of any vehicle to park any vehicle, commercially or privately owned, during the period of June 1st to September 15th annually, on either side of Christensen Lane from the intersection with State Route 35 to its terminus. (09-27-1983)

**C) Garden Street:** It shall be unlawful to park any vehicle for a period of time greater than two hours, except on Sundays and holidays, between the hours of 8:00 AM and 6:00 PM in the following area:

Southerly side of Garden Street from a point 50' from the Main Street intersection to a point 20' from the Storer Street intersection; and on the northerly side of Garden Street from the Curtis Court intersection to the Parsons Street intersection. (02-12-1991)

**D) Green Street:** Beginning at a point 40' from Main Street (Portland Road) on the Northeasterly (Town Hall) side for a distance of 60' parking shall be limited to 30 minutes. (10-14-2014)

**E) Main Street:** Parking is prohibited at any time from the intersection of Grove Street for 50' northerly, such section to be designated as a loading zone, such loading zone to be used for the convenience of the guests of the Kennebunk Inn (45 Main Street) for the purpose of loading and unloading passengers and baggage, and such loading zone to be designated by signage. (06-29-1956; 06-21-2011)

Parking is permitted only in designated marked spaces. It shall be unlawful to park any vehicle for a period of time greater than two hours between the hours of 8:00 am and 6:00 pm, except on Sundays and holidays. Truck parking is prohibited entirely between the hours of 8:00 p.m. to 5:00 a.m. (06-21-2011)

**F) Grove Street Parking Lot:** Parking in the lot south of Grove Street and east of Main Street, owned jointly by the Town of Kennebunk and the owners of Lot 150 and

151 on the Town of Kennebunk Property Tax Map 51, shall be restricted to a 2-hour period. (05-23-1972; 06-21-2011)

**G) Kennebunk High School:** It shall be unlawful for the owner or operator of any vehicle to park, leave standing, either attended or unattended, any vehicle, commercially or privately owned, on Fletcher Street from the eastern-most entrance driveway to the western-most entrance driveway of the High School & Junior High School complex during school days between the hours of 7:00 A.M. and 5:00 P.M. (11-27-1979)

**H) Parsons Street:** Parking shall be prohibited for a period of time greater than 30 minutes on Monday through Saturday between the hours of 8:00 A.M. and 6:00 P.M. on the southwest side from its intersection with Garden Street and extending north 139'. (08-12-1986)

**I) Western Avenue, Lower Village:** It shall be unlawful to park any vehicle for a period of time greater than two hours between the hours of 8:00 AM and 6:00 PM in the following area:

The northerly side of Western Avenue from a point 332' from the Kennebunk River Bridge to a point 100' from the intersection of Western Avenue (Route 9) and Port Road (Route 35). (06-09-1992; 06-21-2011)

With the exception of the area beginning at a point 25' west of Pole J655 and continuing westerly 40' where parking shall be limited to 30 minutes in duration. (06-22-1993; 07-10-2007)

The northerly side of Western Avenue from a point 100' from the intersection of Route 9 and Route 35 to Lake Brook. (07-10-2007)

**J) Water Street:** On the southerly side of Water Street 30 feet from the intersection of Main Street (Route 1) and Water Street to the end of Rotary Park, parking shall be restricted to a 2-hour period. (Adopted by Board of Selectmen 7-13-04)

**K) Port Road, Route 35:** Beginning 150' north from route 9 intersection to a point 715', all parking on Port Road shall be limited to two hours, with the exception of the west side area beginning 176' from intersection of Route 9 & 35 continuing northward for 75' where parking shall be limited to 30 minutes in duration. (07-10-2007; 10-27-2009)

**L) Surf Lane:**

1) Surf Lane from Beach Avenue to Bayberry Avenue, "NO PARKING" on the easterly side only, "NO PARKING" in two spaces on the west side from the intersection. (09-23-2008; 08-11-2009)

2) "ONE WAY" from Bayberry Avenue to Beach Avenue. (09-23-2008)

3) From the intersection of Surf Lane and Bayberry Avenue around Peninsula Drive, "NO PARKING" on westerly side only, "NO PARKING" in two spaces from the intersection. (09-23-2008; 08-11-2009)

4) From the intersection of Surf Lane and Bayberry Avenue around Peninsula Drive, " NO PARKING" within 10' of any driveway on the easterly side. (09-23-2008; 08-11-2009)

**M) All Municipal Parking Lots and Public Rest Areas:** It shall be unlawful to park any vehicle between the hours of 1:00 A.M. and 5:00 A.M. in municipal parking lots and the Town of Kennebunk Rest Area; provided, however that the Town may permit vehicles to park in municipal parking lots and the Town of Kennebunk Rest Area during a snow removal emergency as declared by the Road Commissioner or his designated agent pursuant to ordinance section 2-6. (06-21-2011)

**N) High Street:** Parking on High Street from York Street to Friend Street (where designated) shall be limited to 2 hours between the hours of 8:00 AM and 6:00PM excluding the designated parking space at 7 High Street which shall be a 30-minute allowance (6-14-2016)

**O) York Street:** Beginning 50 ft. from the intersection of High Street and York Street heading southwesterly to Friend Street, parking shall be 30 minutes. Heading Northeasterly on the opposite side of the street beginning at Friend Street to the intersection of High Street and York Street, the parking shall be limited to 2 hours between the hours of 8:00 AM and 6:00 PM. (6-14-2016)

2.2 No double parking will be permitted (except in case of emergency) at any time. (06-21-1967)

2.3 The fact that an automobile, which is illegally parked, is registered in the name of the person shall be considered prima facie proof that such person was in control of the automobile at the time of such parking.

2.4 On a public way or in any privately owned parking lot where there exists an enforcement agreement, pursuant to Title 30-A, Section 3009§D(2), it shall be unlawful to park any vehicle or motorcycle in a parking space clearly marked as a handicapped parking space and which does not bear a special registration plate or placard issued under Title 29, Section 252, 252-A or 252-C, or a similar plate issued by another state. Clearly marked includes painted signs on pavement and vertical standing signs which are visible in existing weather conditions.

The fact that an automobile, which is illegally parked, is registered in the name of the person shall be considered prima facie proof that such person was in control of the automobile at the time of the parking.

Any person, firm or corporation who violates this ordinance, shall, on adjudication, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the municipality of Kennebunk. ( 06-12-02)

Any person accused of this violation may settle and compromise the claim against him or her for such illegal parking by paying the municipality a fee as set by the Board of Selectmen's fee schedule; such payment may be made at the police station within 7 days of the time such violation was committed. (06-12-02)

**2.5** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-02)

AMENDED 07-10-2007; AMENDED 09-23-2008; AMENDED 12-23-2008;  
AMENDED 06-21-2011  
AMENDED 04-08-2014  
AMENDED 06-14-2016

## **2-3 ONE-WAY AND PROHIBITED TRAFFIC**

**3.1** It shall be unlawful to operate any vehicle upon or along Curtis Court in a southerly direction from the Town of Kennebunk Parking Lot to Main Street. (10-26-1971)

**3.2** It shall be unlawful to operate any vehicle upon or along Garden Street in an easterly direction. (10-26-1971)

**3.3** It is unlawful for any truck to drive on Chase Hill Road unless it is destined for a location on that street. (02-22-11)

**3.4** It shall be unlawful for the operator of any motor vehicle to enter Devonshire Lane from Route 35 when proceeding in an easterly direction. Any person, firm or corporation who violates any provision of this section upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. (05-08-1979; 06-12-02)

### **3.5 Prohibited Traffic on Town Property**

**3.5.1** It shall be unlawful for any person or persons to operate a motor vehicle, as defined in 29 M.R.S.A., Section 1, subsection 7, upon any of the below listed Town properties. This prohibition shall not pertain to any portions of these properties which

are paved for motor vehicle traffic, nor shall it pertain to maintenance vehicles operated by the Municipality or by public utilities needing access to their property, nor shall it pertain to rights-of-way across said property.

**3.5.2** The following Town properties shall be covered by this Ordinance:

- A)** The former "Kennebunk Seashore Railroad Line" otherwise known as the "Bridle Path" so-called, commencing at its intersection with Railroad Avenue to the intersection of the Sea Road as it passes the Webhannet Golf Course.
- B)** All Town property extending from the end of Plummer Street to the Kennebunk River known as "Wonderbrook Park," so-called.
- C)** All Town property in the Wiggin's Pond, Wiggins Pond Lane area.
- D)** Harbor Playground, Park Street.
- E)** West Kennebunk Fields, Holland Road.
- F)** Lower Village Field, School Street.
- G)** All Town properties lying between the Boston & Maine Railroad and the River Bend Woods development.
- H)** The portion of the Eastern Trail that is accepted by the Eastern Trail Maintenance District and located within the Town of Kennebunk. (06-21-2011)

**3.5.3** Any person, firm or corporation who violates any provision of this section shall, upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality. (06-19-1984; 06-12-02)

**3.5.4** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-02)

## **2-4 LIMITED OR PROHIBITED CONVEYANCES**

**4.1** It shall be unlawful for any person or persons to ride a bicycle or any other two or three-wheeled vehicle regardless of the means of propulsion, on the sidewalks bordering the streets and street sections named in section 2-4.4 "Skateboard Ordinance." Any person or persons who violate the provisions of this ordinance if past the age of 18 years, shall, upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality; if the person or persons has not passed his or her eighteenth birthday such punishment by fines as above shall be charged against the parent, parents, or guardian. (06-22-1971; 02-08-1992; 06-12-02; 06-21-2011)

**4.2** Horses shall not be allowed on public sidewalks. Horses are permitted on the Bridle Path, Eastern Trail and Kennebunk beaches so long as they are wearing horse waste bags or waste is removed by the rider; provided, however that from June 15th through Labor Day from 9:00 AM to 5:00 PM horses are prohibited entirely on all Kennebunk beaches, except for Parson's Beach. It shall be a violation of this ordinance and ordinance 3-4.3.1 for any person who owns, possesses or controls a horse to fail to remove and dispose of any feces left by said horse on any beach, trail or other public way. (04-22-1975; 06-21-2011; 6-12-2012)

**4.3** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing.

## 2-4.4 SKATEBOARD ORDINANCE

1) It shall be unlawful for any person to operate or ride upon a skateboard or scooter on any public sidewalk or street bordering Main Street, Storer Street from Main Street to Berry Court, Garden Street, Water Street, Factory Pasture Lane, Portland Road, Route 9 Lower Village and Route 35 Lower Village. Further, it shall be unlawful to operate or ride upon a skateboard or scooter on any public way as to interfere with or obstruct the normal flow of traffic.\*

2) Any person who violates this ordinance, shall upon adjudication, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to the municipality. (06-12-02)

3) Any person cited for violation of this ordinance who wishes to avoid prosecution may settle and compromise the claim against them for such violation by payment of a fine and surrender of the Skateboard/Scooter in accordance with the following schedule:

	<u>Fine</u>	<u>Period of Surrender</u>
1st Violation	As set by the Municipal Officers	7 days
2nd Violation	"	30 days
3rd & Subsequent Violations	"	Forfeited to and Disposed of by Town

If person cited for violating this ordinance is under the age of 18, that person shall be accompanied by his or her parent or legal guardian when appearing at the Police Department to settle and compromise the claim.

4) Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing.

ADOPTED BY THE BOARD OF SELECTMEN 11-24-1992

**\*AMENDED BY THE BOARD OF SELECTMEN 02-13-2001; 06-12-02; 06-21-2011**

## **2-4.5 BICYCLE CABS ORDINANCE**

**Section 1 Definitions.** As used in this article, unless the context otherwise indicates, the following words shall have the following meanings:

*Bicycle cab* means any vehicle for hire that is powered by means of a person operating a two- or three- wheeled non-motorized vehicle that also includes a separate seating area for passengers.

*Street, way or public place* means any street, way, trail, path, promenade, park, plaza, square, or other public property, or portion thereof.

*To operate* means to pedal, push or otherwise cause the bicycle to move.

### **Section 2 License Required**

No person shall operate a bicycle cab on any street or way or in any public place without a bicycle cab license. A separate license shall be required for each bicycle cab. Licenses are not transferable from one operator to another, except in the case of a sale of a business operating a bicycle cab to another operator.

### **Section 3 License Application**

Applications for bicycle cab licenses shall contain the following:

- a) A complete listing of all operators to be employed by or associated with the Applicant, giving each person's full name, age and present address. A change in operator(s) shall be filed with the Town Clerk.
- b) A detailed description of each bicycle cab and any other equipment to be used by the applicant, including a photograph of each bicycle cab and the specifications of each such vehicle.
- c) The name, address and telephone number for the license applicant. Where the applicant is a corporation, limited liability or partnership, the applicant shall include the name, address and telephone number of the person who will be responsible for the supervision of the operation of the bicycle cab and the names, addresses and telephone numbers of all partners, officer or directors of the entity.
- d) The license fee established by the Board of Selectmen as part of the Town's Fee Schedule for Town Ordinances, Fees and Fines.
- e) A notice from the Police Department indicating that the bicycle cab has passed the inspection required by subsection 7(d) herein.

### **Section 4 Licensing Authority; Issuance of Licenses**

The Town clerk shall be the licensing authority for bicycle cab licenses. Each year a maximum of three (3) licenses shall be available on the first day of business in January. Applications shall be accepted during normal business hours of Town Hall only and will not be accepted prior to the first day of business in January. In the first year of licensing, licenses shall be issued on a first-come, first-served basis. After the first year of issuance, priority shall be given to a license holder from the previous year who has not violated any terms of this Ordinance.

### **Section 5 Conditions Precedent to Issuance**

Prior to the issuance of any bicycle cab license, and in addition to any other requirements of this Ordinance, the applicant shall file with the Town Clerk evidence of an insurance policy covering the term of the license and executed by an insurance company authorized to issue such policies in this State in the usual form of vehicle or other liability insurance policies in this State for injuries to persons and property resulting from the use and operation of the bicycle cab to be licensed. Such policy of insurance shall be issued for a principal sum sufficient to provide coverage in the amount of not less than four hundred thousand dollars (\$400,000) combined single limit, for bodily injury, death and property damage, or such other minimum amount as may be set by the Maine Tort Claims Act, 14 M.R.S.A. Section 8105. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be provided to the Town Clerk. Such certificate shall state that the issuing agent shall notify the Town Clerk in writing no less than thirty (30) days prior to the cancellation of the policy. The Town shall be named as an additional insured under the policy.

### **Section 6 Requirements for Bicycle Cab Operators, Permitted Routes**

- a) Operators must be at least 18 years of age.
- b) Operators must have a valid driver's license, a copy of which shall be provided to the town Clerk.
- c) Operators shall maintain a clean and neat appearance while on duty.
- d) Operators who are available for hire shall not refuse to transport a person requesting a ride, provided that:
  - 1) The person request a ride to or in an area where bicycle cabs are not allowed under this Ordinance or requests a ride that is longer than the operator reasonably believes that he or she can accomplish.
  - 2) The proposed passenger is not disorderly, engaged in the commission of a crime or otherwise unfit to be transported. All passengers much be fully seated at all times when the bicycle cab is in operation, except for loading and unloading.

- 3) More persons have requested transport than the operator can accommodate at one time.
- e) Bicycle cabs shall only be operated in the area bounded by the bridge to Kennebunkport, by the bridge on Beach Street at Gooch's Creek, by a point one hundred yards beyond the bridge at Lake Brook and by the intersection of commons Lane and Route 35/Port Road.

The Board of Selectmen may by rule alter or limit these routes or add routes where it is determined that the operation of bicycle cabs will not interfere with public safety.

- f) Bicycle cabs shall only be operated during the period of time and the hours specified in rules adopted by the Board of Selectmen
- g) Bicycle cabs shall be operated on streets and shall not be operated on sidewalks, except for the loading or unloading of passengers.
- h) There shall be no solicitation of business in any manner for a bicycle cab while that cab is in operation. Prohibited solicitation while standing shall include shouting, hollering, whistling, clapping, or making other loud noises, grabbing or otherwise annoying or harassing passersby, or any other conduct detrimental to the image or reputation of the trade or the public safety or in a manner that constitutes a disturbance of the peace.
- i) No bicycle cab or related equipment shall be kept or stored on any street or way or in any public place while not in service.

### **Section 7 Requirements for Bicycle Cabs**

- a) Bicycle cabs shall have headlights and lights on steps to the passenger seating area.
- b) Bicycle cabs shall be maintained in a clean and neat condition at all times.
- c) Bicycle cabs shall be operated in compliance with the requirements of 29-A M.R.S.A. Sections 2063 and 2084.
- d) Bicycle cabs shall be inspected by the Police Department 1) as part of the initial license application process and 2) prior to the commencement of operation each licensing year.
- e) A copy of the required license shall be kept on the bicycle cab at all times.

### **Section 8 Suspension or Revocation of License**

The Board of Selectmen may, after notice and an opportunity for a hearing, suspend or revoke a bicycle cab license for any of the following reasons:

- a) The operator is less than eighteen (18) years of age.
- b) The operator has charged a fare that exceeds the limitations established by Section 9 of this Ordinance.
- c) An operator has disobeyed any order or direction of any police officer related to the operation of the bicycle cab.
- f) An operator has operated the bicycle cab while under the influence of alcoholic beverages or any controlled substance.
- g) An operator has operated the bicycle cab in a manner that impedes or blocks the Normal or reasonable movement of pedestrians or vehicular traffic.
- h) The operator or licensee has caused or permitted any violation of this Ordinance.

**Section 9 Maximum Fare; Rate Card to be Displayed on Vehicle.**

The fare for any trip in any licensed bicycle cab shall not exceed five dollars (\$5.00) per passenger per quarter hour or fraction thereof, regardless of the distance of the trip. A rate card bearing the following statement shall be displayed on each vehicle in such a manner as to be visible to passengers riding in the bicycle cab at all times while such vehicle is in service:

PASSENGER INFORMATION  
BICYCLE CAB NO. \_\_\_\_\_

The maximum fare for any trip in this vehicle is \$5.00 per passenger per quarter hour or fraction thereof, regardless of the distance of the trip. If you have questions or complaints about the fare you have been charged or the service you have received, please call the Town clerk of the town of Kennebunk at (207) 985-2102.

The Board of Selectmen may change this fee from time to time by amendment of the Board of Selectmen's Fee Schedule for Town Ordinance, Fees and Fines. The rate card will be changed to reflect any changed fee.

## **Section 10 Rule-Making Authority**

The Board of Selectmen shall have authority to make reasonable rules and regulations, consistent with the public safety and the image and reputation of the trade, governing the training and qualifications of bicycle cab operators, and the operation of bicycle cabs. Such rules shall include the hours and dates of permitted operation, changes to permitted routes, and the suspension of bicycle cab operation if determined to be necessary to protect public health, safety and welfare.

## **Section 11 Enforcement**

This Ordinance shall be enforced by the Chief of Police or any designated officer, either by an action in the form of a civil infraction in the Maine District Court, or by a request for a suspension or revocation hearing before the Board of Selectmen. Upon a determination by the Court that a violation has occurred, the violator shall be fined as set by the Board of Selectmen's Fee Schedule for Town Ordinance, Fees and Fines.

## **Section 12 Severability**

Should any section or provision of this Ordinance or rules promulgated hereunder be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not invalidate any other section or provision of this Ordinance.

Adopted June 14, 2006. AMENDED 06-21-2011

## **2-5 BEACH PARKING PERMITS**

### **5.1 Purpose**

To assure that the residents of and residents' visitors to the Town of Kennebunk shall have access to the beaches of Kennebunk, that those beaches and the adjacent area shall not become overcrowded, and to preserve the health and safety of the beach area for the residents of this part of the Town.

**5.2** Parking at Kennebunk beaches during the period from June 15th through September 15th of each year shall be by permit only. Parking is allowed from 6:00 AM to 11:00 PM. There is no overnight parking allowed.

**5.3** Residents and taxpayers of the Town of Kennebunk may obtain three (3) parking permits for the Kennebunk beach parking areas for a fee as set by the Board of Selectmen's fee schedule per permit at the Town Hall. Permits shall be valid for a period of up to one year.

**5.4** Guest parking permit cards for Kennebunk Beach-parking areas may be purchased by residents and taxpayers of Kennebunk for a fee as set by the Board of Selectmen's fee schedule. These permits shall be registered in the name of the purchasing family and may be secured at the Town Hall. Provided that they are physically located within the Town of Kennebunk, 1) motels and hotels and 2) businesses that rent motorized scooters and similar recreational vehicles to individuals for short durations, may obtain parking permit cards at the Town Hall for use by their guests and customers at a charge as set by the Board of Selectmen's fee schedule.

**5.5** Non-residents of the Town of Kennebunk may purchase parking permits for Kennebunk Beach parking areas at the Town Hall according to the following fee schedule:

1 Day Permit	Fee as set by the Board of Selectmen's fee schedule
1 Week Permit	Fee as set by the Board of Selectmen's fee schedule
Full Season Permit	Fee as set by the Board of Selectmen's fee schedule

Annually prior to June 15<sup>th</sup>, the Town Manager or designee may select one (1) or more local businesses to sell and distribute non-resident beach permits on behalf of the Town. Such non-resident beach permits shall include daily, weekly and seasonal permits. The Board of Selectmen shall determine commission rates for the participating businesses.

### **5.6 Pass Transferability and Replacement:**

**Transferability:** Three Resident Beach permits are issued to each Kennebunk resident and/or taxpayer. Transfer of permits is prohibited and usage of permits is limited to the resident and/or taxpayer's vehicles.

Replacement: The Town will replace a destroyed or lost Resident permit for the intended resident and/or taxpayer upon payment of fee as set by the Board of Selectmen's fee schedule per permit.

**5.7 Placement of Non-Resident Beach Permits on Vehicles:** Non-Resident permits are to be placed on the dashboard on the passenger's side of the vehicle.

Beach Permits need to be visible to the patrolling police officers.

**5.8 Refunds:** No refunds for permits will be issued.

**5.9 Term of Permits:** All Resident Beach permits can be up to two (2) calendar years. Permits become effective the day issued and expire in the prescribed year cycle. Non-resident permits become effective the day issued and expire on the date written or printed on the permit.

**5.10** There shall be parallel parking by permit only along the road adjacent to Gooch's Beach, so-called, from the corner of Beach Avenue to utility pole J88 at Kennebunk Beach, except in areas designated as "NO PARKING". There shall be diagonal parking by permit only along the south side of Beach Avenue adjacent to Kennebunk Beach running from the northeasterly end of Kennebunk Beach (opposite Utility Pole J88) to the southwesterly end where the paved parking lot ends (approximately 150 feet (more or less) southwest from Utility Pole J605) and parallel parking by permit only along the north side of Beach Avenue from utility pole J88 to utility pole J92 except in areas designated as "NO PARKING".

**5.11** Parking permits shall be numbered and shall state the period of time for which they are valid.

**5.12** Resident Permit stickers shall be affixed to the lower corner of the passenger side of the vehicle windshield. No vehicle may occupy more than one designated parking space.

**5.13** Any person, firm or corporation who violates 2-5, upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. Any person accused of a violation may settle and compromise the claim against them for such illegal parking by paying the Municipality the sum as set by the Board of Selectmen's fee schedule; such payment may be made at the Town hall within 7 days of the time such alleged offense was committed.

**5.14** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing.

ADOPTED 01-20-1993

AMENDED 11-14-2001; 06-12-2002; 06-09-2004; 06-21-2011

## **2-6 PARKING RELATED TO WINTER AND SNOW PLOWING/REMOVAL**

**6.1** From the first day of November to the first day of the following April of each year it shall be unlawful for any automobile to be left on any public street in the Town of Kennebunk between the hours of 1:00 A.M. and 5:00 A.M, or such other hours as may be determined by order of the Board of Selectmen with public notice given of such change. Any person, firm or corporation who violates any provision of this section (2-6) shall, upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. In accordance with this section (2-6), the registered owner of any vehicle in violation of said Ordinance, shall be presumed the operator of said vehicle. (12-30-1980; 06-12-02; 06-14-06; 11-14-2006; 06-21-2011)

**6.2** For the purpose of snow plowing, it shall be unlawful to park any vehicle on any public way within the Town of Kennebunk during snowstorms. (12-14-1976)

**6.3** For the purposes of snow removal, it shall be unlawful for any vehicle to park on any public way within the Town of Kennebunk under the following conditions:

**A)** The Road Commissioner or his designated agent has declared a snow removal emergency.

**B)** Before any commencement of snow removal "Snow Removal Emergency - Tow Away Zone" signs shall be posted.

**C)** Vehicles parked in the designated areas three hours after posting of the signs shall be in violation of this section (2.6.3). (12-14-1976)

**6.4** The Police Department, and all sworn members thereof, are hereby authorized to have a commercial towing service remove vehicles that are deemed to be in violation of this ordinance. When feasible, officers shall make reasonable efforts to locate owner of said vehicle(s). Any towing or garage expense shall be paid by the owner of the automobile so removed. (12-14-1976; 3-24-2015)

**6.5** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED: 12-14-1976

AMENDED: 12-30-1980; 06-12-2002; 06-14-2006; 11-14-2006; 06-21-2011

## **2-7 COMMERCIAL TRAFFIC REGULATION ON TOWN WAYS**

**7.1** The purpose of this section is to regulate the travel of commercial through vehicles on certain town ways within the Municipality Of Kennebunk. The restrictions imposed prevent safety hazards, which have been or will be caused by the passage of such traffic. This section (2-7) is enacted pursuant to Title 30-A M.R.S.A. Section 3001.

**7.2** The following definitions are used in this section:

**A) Through Commercial Traffic:** Any vehicle, which is being used or is normally used to earn money or for some other business purpose which passes over certain Town Ways without the objective of or purpose to stop on said certain way for a commercial activity. Vehicles used to make residential deliveries or rented on an occasional basis for some purpose other than earning money or use in a business shall not be considered commercial vehicles.

**B) Town Way:** An area or strip of land designated and held by the Municipality for the passage and use of the general public by motor vehicles and all town or county ways not discontinued or abandoned.

**7.3** When signs are erected giving notice thereof, no person shall operate any commercial vehicle, at any time, upon the town ways where such signs are placed.

**7.4** This section (2-7) may be enforced by any duly appointed law enforcement officer of the Municipality of Kennebunk, any duly appointed law enforcement officer of the York County Sheriff's Department, or any duly appointed law enforcement officer of the Maine State Police. This section (2-7) shall be enforced according to the provisions of 29 M.R.S.A. Sections 2300, 2301 and 2301A, which are hereby incorporated by reference.

**7.5** The operation of the vehicle shall be prima facie evidence that said operation was caused by the person, firm, or corporation holding any permit or certificate for said vehicle.

**7.6** Any person who violates any provision of this section, (2-7) upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality. Each violation shall be considered a separate offense and violation of this section (2-7). (06-12-02)

**7.7** If any provision or part of this section (2-7) shall be judged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the section (2-7) as a whole or any other provision or part thereof.

PASSED 03-22-1983

**7.8** Fees shall be shown on a fee schedule as set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

## **2-8 KENNEBUNK RIVER PASSAGE ORDINANCE**

### **8.1 Boat Operation**

- A) Boats shall not be operated faster than 5 knots per hour.**
- B) A vessel is liable for any damage or injury caused by its wake.**
- C) Water-skiing will be allowed in posted areas only.**
- D) No water skiing shall be allowed between the Railroad Bridge and the outer limit of the Kennebunk River jetty.**
- E) Unmuffled noise from engines, outboards, amplifying systems, radios, and the like shall be kept at a minimum when in the proximity of piers, floats, or yacht anchorages anywhere in the river.**
- F) No person shall operate any vessel in a reckless or negligent manner so as to endanger the life, safety or property of any person.**
- G) No vessels shall run their engines with propellers turning while tied to floats or wharves. Vessels requiring dock trials may do so only with permission of the Harbormaster.**

### **8.2 Moorings**

- A) All moorings must be identified and must be registered with the Harbormaster and are subject to the requirements of Section 10-5 of the Harbor Ordinance.**
- B) If a mooring is not to be used, the owner shall notify the Harbormaster so that the mooring may be removed and the space made available for another mooring. Mooring rights under this section (2-8) are non-transferable.**
- C) Moorings shall be assigned in accordance with Section 10.5.E of the Harbor Ordinance.**
- D) Vessels may be required to be moored bow and stern on direction of the Harbormaster.**
- E) Moorings shall not be less than the following minimum sizes: Vessels to 18' LOA- no less than 500 pound granite block; Vessels 18' and over- no less than 1000 pound granite block.**
- F) All moorings shall have a 1 inch mooring pin through the block and chain to reach the mean low water level. Total length of the mooring pennant, from block to mooring cleat, will be as set by the Harbormaster. The minimum buoy size shall be 10 inches in diameter.**

### 8.3 Berthings

- A)** Tie-up periods at the Town Floats shall be limited to 15 minutes. A tie-up limit at the Town floats or wharves for visitors at night, or for vessels with breakdowns, will be limited at the discretion of the Harbormaster.
- B)** All vessels entering the Kennebunk River are subject to the direction of the Harbormaster who should be consulted before anchoring or tying up to any of the facilities or moorings.
- C)** All draggers while berthed at wharves shall have their trawl doors swung inside the rails at all times.
- D)** No fishing gear, equipment, or any other matter shall be allowed to remain on the Town wharves or floats for over 24 hours without permission of the Harbormaster.
- E)** No swimming will be allowed from any public (town, state, or federal) wharf or float.

### 8.4 Pollution

- A)** No oil, gasoline or other petroleum products shall be dumped or pumped overboard. When such products are accidentally spilled, the spiller will be liable for the damage caused.
- B)** No rubbish, garbage or dead fish shall be discharged into the river.
- C)** No derelict vessels, motors, etc. or dilapidated structures shall be removed or repaired without orders of the Harbormaster.

### 8.5 Miscellaneous

- A)** Fixed or floating signs may be posted as directed by the Harbormaster to encourage or to help enforce this section (2-8).
- B)** Parades, water carnivals or any water activity other than normal traffic shall require the written permission of the Harbormaster and shall be regulated by him.

ADOPTED 04/06/1971  
AMENDED 06/14/2000

## **2-9 SIDEWALK PARKING**

It shall be unlawful for the owner/operator of any vehicle to park any vehicle commercially or privately owned, on any publicly-maintained Town sidewalk except on those sidewalks as shown on the Town's Permitted Sidewalk Parking list, which may be amended from time to time by order of the Board of Selectmen. Same shall be kept on file in the Town Clerk's office.

The fact that an automobile, which is illegally parked and is registered in the name of the person, shall be considered prima facie proof that said person was in control of the automobile at the time of said parking.

Any person, firm or corporation who violates any provisions of this ordinance, shall upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule together with the cost to be used by the Municipality of Kennebunk.

Any person accused of a violation may settle and compromise the claim against him or her for such illegal parking by paying the Municipality of Kennebunk the sum as set by the Board of Selectmen's fee schedule; such payment may be paid at the Municipal Office within 7 days of the time said alleged offense was committed. (06-12-02)

Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ABOVE ORDINANCE ADOPTED 01-24-1984 UNLESS OTHERWISE NOTED.  
AMENDED 06-12-2002  
AMENDED 06-21-2011

## **2-10 KENNEBUNK HARBOR ORDINANCE**

### **10.1 Purpose**

The purpose of this Ordinance is to provide for the just and orderly operation of marine activities on the Kennebunk River.

### **10.2 River Committee**

The River Committee established by the Interlocal Agreement between Kennebunk and Kennebunkport, or any successor Interlocal Agreement, shall be responsible for all Kennebunk River harbor activities as set forth in the Agreement, the Ordinance and as otherwise required by law.

The River Committee shall have the authority to establish and collect fees for moorings and harbor usage. Such fees must be reasonably related to the cost of maintaining and regulating the Kennebunk River harbor and may include a charge to establish a capital reserve account for harbor dredging. However, before any such fees may be imposed, the River Committee shall hold a public hearing preceded by at least 10 days notice in a newspaper in general circulation in Kennebunk. The initial fees must be approved by the Board of Selectmen before becoming effective; thereafter, the River Committee may adopt amendments pursuant to the same procedure provided the Board of Selectmen may veto any changes within 14 days of adoption by the River Committee.

The River Committee is only authorized to spend such monies as are appropriated by Town Meeting.

### **10.3 Harbormaster**

The Harbormaster for the Kennebunk River is appointed annually by the Boards of Selectmen of Kennebunk and Kennebunkport. Certain duties and responsibilities of this office are prescribed by Title 38, M.R.S.A. He has the additional duty to administer and enforce the provisions of this ordinance with the authority granted by law and through his appointment as Harbormaster. For purposes of compensation and employment benefits, he shall be deemed an employee of the Town of Kennebunk, which may charge pro-rata shares of such expenses to Kennebunkport. However, for all purposes of initial employment recommendation to the Board of Selectmen and subsequent oversight and annual job performance review, he shall report solely to the River Committee, which may recommend discipline or discharge to the Kennebunk Town Manager who may take such discipline only for just cause after notice and hearing.

He may utilize the Town Office and the Kennebunk River Committee for assistance in the administrative aspects of his responsibilities.

### **10.4 River Limits and Channel**

**4.A) Kennebunk River:** For the purposes hereof (and the area regulated hereby) the Kennebunk River is defined as all portions of said River within this municipality which extend and run generally southerly from the prolongation southerly of the Kennebunkport and Arundel town boundary at Goff Brook, including all waters to the high tide levels thereof, extending to a line drawn between the extreme offshore limits of the jetties at the mouth of said River.

**4.B) Kennebunk River Channel:**

For the purposes of this Ordinance, the Federally Designated portion of the channel, so called, of the Kennebunk River is defined as follows:

The entrance of the Kennebunk River Channel is 100 feet wide and runs from the mouth of the river to a point beyond the Kennebunkport Marina, where it narrows to 75 feet in width. Thence it extends northerly, continuing at a width of 75 feet, terminating at a line, the end-point coordinates of which are N191412.53, E417265.28. and N191445.83, E417332.48 (NAD 1927, State Plane, Feet). All of said Federally Designated channel is as depicted on plans encaptioned "Kennebunk River, Maine-Maintenance Dredging", dated July 19, 1984, bearing drawing number 2226, consisting of two sheets, the same being incorporated herein by reference. The northerly limit of the federal channel was established by U.S. Public Law 104-33, October 12, 1996 which amended the above referenced plans of 1984.

The Locally Designated Channel, so called, of the Kennebunk River is defined as follows:

A 50 foot wide Locally Designated Channel beginning at the northerly limit of the Federally Designated Channel and extending northward approximately 758 feet; thence a 40 foot wide Locally Designated Channel beginning at the end of the 50 foot wide Locally Designated Channel and extending northerly approximately 312 feet to the Mathew J Lanigan Bridge. All of said Locally Designated Channel is as depicted on a plan encaptioned "Kennebunk River Locally Designated Channel," dated August 26, 2004, and prepared by the Southern Maine Regional Planning Commission, the same being incorporated herein by reference.

## **10.5 Rules Of River Use**

**5.A) Prudent Operation of Vessels:** Vessels shall be operated on the Kennebunk River in a reasonable manner so as not to endanger persons or property or to cause excessive wash. In no case shall speeds exceed five (5) knots while operating on any portion of the Kennebunk River south of the aforementioned Railroad Bridge.

**5.B) Traps in the River:** No operation of fixed traps of any kind will be allowed in the Kennebunk River southerly of the Railroad Bridge. Storage cages shall be permitted if attached to a vessel or to a vessel's mooring.

**5.C) Record of Moorings:** The Harbormaster shall maintain a written record of the basic information on each mooring including assigned location, identifying number, vessel description, owner, mooring specifications and details and any additional data deemed useful.

The Harbormaster will maintain the aforementioned plans of the Channel and a chart of the Harbor showing current mooring location assignments.

Each mooring location will be assigned an identifying number which must be marked in a legible fashion on the marker buoy or log in at least three inch (3") numerals.

**5.D) Mooring Authorizations:** No moorings shall be permitted, and no moorings shall be placed, utilized or allowed without written authorization from the Harbormaster for the mooring of a specific vessel therein. Each day that a mooring remains in place or is utilized in violation of this section shall be deemed a separate violation hereof.

The Harbormaster shall have the authority to determine the total number of allowed moorings based on available Mooring Sites. The Harbor Master may consult with the Kennebunk River Committee and any other appropriate authority to determine mooring areas and their capacity. Commercial Moorings shall comprise at least 50% of the total number of Mooring Sites within the Kennebunk River. If an existing Commercial Mooring becomes available within the Kennebunk River, it may not be assigned for use as a Recreational or Transient Mooring if such assignment would cause the number of Commercial Moorings to constitute less than 50% of the total number of available mooring sites within the Kennebunk River.

The Harbor Master may change the location of assigned Mooring Sites when the crowded condition of the river, the need to conform with Title 38 M.R.S.A., §§ 3, 7-A, or other conditions render the change desirable.

The Harbor Master has absolute authority over all moorings and mooring locations in accordance with the terms of this Ordinance and the laws of the State of Maine.

No Vessel greater than forty feet (40ft) shall be assigned a mooring space, except that should there be space available outside of the Federally designated Channel a commercial vessel of up to forty four feet (44ft) may be eligible for a mooring provided that it does not conflict with any existing moorings and/or create any hazards or obstructions to navigation.

Any mooring location which is not utilized by the holder of the mooring authorization therefore, or by an assignee approved by the Harbormaster, for a term of thirty (30) consecutive days during the months of June, July and August of any year shall be declared vacant and shall thereupon be available for reassignment by the Harbormaster except where the holder of the mooring has sent advance written notice to the Harbormaster showing good cause.

**5.E) Mooring Precedence for Mooring Locations:** The rules contained in this section are intended to comply with the requirements of Title 38 M.R.S.A. Section 3, 7-A, 8 and 11.

The Harbormaster shall maintain a chronological list, according to the date and time, of all vessel owners requesting mooring location assignment or reassignment to a new location.

Except as otherwise required by law, the Harbormaster shall assign spaces as they become available from the waiting list in accordance with the following priority guidelines:

**a.** To shorefront owners who request for one mooring location immediately adjacent to frontage, and who have no other current shorefront moorings, so long as the assignment of such a mooring is practicable and so long as neither the mooring nor any vessel tied to the mooring encroaches upon the federal navigation channels or anchorages or upon the natural channels established by the Board of Selectmen. The assignment of a mooring site under this priority guideline shall not prevent the shorefront owner from receiving additional mooring assignments under the allocation system for other moorings set forth in this ordinance.

Under this provision, a "shorefront owner" is an owner of shore rights of at least 100 contiguous feet of frontage.

**b.** To resident commercial vessel owners, unless less than 10% of the moorings are currently assigned to non-resident commercial owners, in which case the next mooring available shall be assigned to the first non-resident commercial vessel owner on the list.

**c.** To resident pleasure vessel owners, unless less than 10% of the moorings are currently assigned to non-resident pleasure vessel owners, in which case the next mooring available shall be assigned to the first non-resident pleasure vessel owner on the list.

**d.** To non-resident commercial vessel owners.

**e.** To non-resident pleasure vessel owners.

**f.** A dedicated continuous run at the end of the Kennebunk River adjacent to Government Wharf running northerly shall be kept specifically for commercial fishing vessels only. (Exhibit A) (06-10-2014)

Future mooring assignments will be on an as available basis in accordance with the chronological listing of requests and the foregoing priority guidelines. These priority guidelines shall not apply to the assignment of moorings located within the area dredged pursuant to the Kennebunk River Federal Navigation Project as delineated by the U.S. Army Corps of Engineers also defined as the Kennebunk River Channel.

#### **5.F) Special Rules for Federal Anchorage Areas**

The following provisions are intended to comply with the requirements of the U.S. Army Corps of Engineers for federal anchorages and thus shall apply only to the following Portion of the Kennebunk River over which the Harbormaster has control: the area dredged pursuant to the Kennebunk River Federal Navigation project, as delineated by the U.S. Army Corps of Engineers.

Within the area described above (and only within this area) the following rules shall apply:

(1) The priority guidelines under “Mooring Precedence for Mooring Locations” under Section 5.E of this ordinance shall not apply and the Harbormaster shall assign mooring spaces as they become available, from a chronological waiting list, without regard to residency of the applicant.

(2) No priority shall be given to residents if skiff tie-off space becomes overcrowded.

Nothing in this section shall be construed to prohibit the Harbormaster from giving priority to commercial vessel owners in mooring location and skiff tie-off space.

#### **5.G Channel to Remain Free of Obstructions**

The Harbormaster shall be empowered to ensure that the Federally Designated Channel and Locally Designated Channel of the Kennebunk River shall remain navigable and free of obstructions.

#### **10.6 Penalties**

Violation of any of the provisions of this Ordinance shall be deemed a civil violation. They are enforceable by the Harbormaster or any other law enforcement officer with jurisdiction in Kennebunk or upon the waters of the Kennebunk River by an action in the form of a civil infraction in the Maine District Court, District Ten, Division of Eastern York, Biddeford; upon a determination by said Court on a violation that occurred the violator shall be fined as set by the Board of Selectmen’s fee schedule for each violation; each day a continuing violation exists is a separate violation of the provisions hereof. All fines collected hereunder shall inure to the Harbor Committee budget. (06-12-02)

Penalties for violations of the laws of Maine with regard to speed restrictions, reckless operation of a vessel, operation of a vessel while under the influence of liquor or drugs and all other violations of State Statute shall be as otherwise provided by law.

If the Harbormaster incurs costs in the conduct of his duty as a direct result of the failure of a vessel owner or operator to comply with this ordinance or the Statutes of the State of Maine, the Harbormaster may recover those costs and reasonable remuneration for his time by filing a civil complaint against such owner or operator in the Maine District Court, District Ten, Division of Eastern York, Biddeford.

## **10.7 Definitions**

**Vessel:** The word “vessel” as used herein shall include boats of all sizes powered by sail, machinery or hand, scows, dredges, lobster, crab and shellfish cars, and craft of any kind.

**Commercial Vessel:** A vessel from which the owner obtains in excess of 67% of his earned income. The definition of Commercial Vessel includes Commercial Fishing Vessel, unless otherwise indicated (7/17/2-012).

**Commercial Fishing Vessel:** A vessel from which the owner obtains in excess of 67% of his earned income from commercial fishing (7/17/2012).

Commercial fishing is defined as fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.  
(6/10/2014)

## **10.8 Separability**

If any provision or clause of this ordinance or application thereof to any person, persons or circumstances is held invalid, such invalidity shall not offset other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end provisions of this Ordinance are declared to be separable.

Where there is a conflict between this ordinance and any other Federal, State, or Local law, statute, regulation, rule or ordinance, the more restrictive provision shall apply.

## **10.9 Maine Law**

Additional laws relating to boating are contained in M.R.S.A. Titles 12, 17 and 38 and Department of Marine Resources Laws and Regulators.

## **10.10 Authority**

This ordinance is adopted pursuant to Title 38 M.R.S.A. sec 1, et seq., Title 30-A M.R.S.A. sec. 3001, and the Home Rule Provisions of the Maine Constitution.

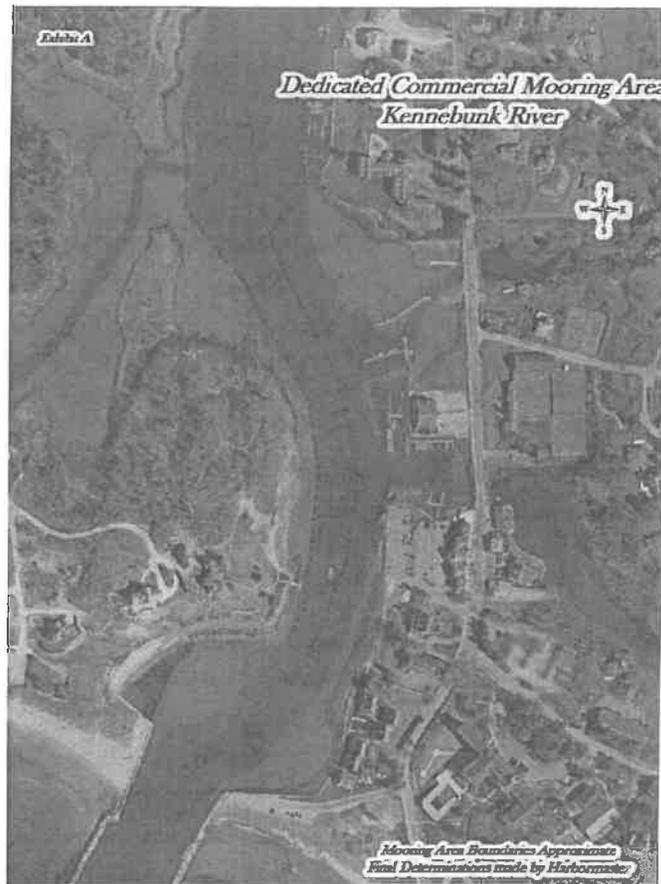
## **10.11 Amendments**

After public hearing by the Board of Selectmen, this ordinance may be amended at an annual or special Town Meeting, provided such amendment is consistent with any interlocal agreement that may be in effect at the time concerning management of the Kennebunk River, including the “River Committee Interlocal Agreement”, dated July 1, 2000, or any amendments or successor agreements thereto.

**10.12** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

**ADOPTED 03/19/1985; AMENDED 06/14/2000; 06/12/2002; 06/16/2005; 06/21/2011; 06/10/2014**

Exhibit A



**2-11 FIRE HYDRANTS/PARKING**

**11.1** It shall be unlawful for the owner or operator of any vehicle to park, either attended or unattended, within ten (10) feet of a fire hydrant. (06-21-2011)

A violation of this provision shall be subject to a fine as set by the Board of Selectmen's fee schedule. (06-12-02)

**11.2** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

APPROVED: 04-12-1983 - BOARD OF SELECTMEN  
AMENDED: 06-12-02; 06-21-2011

## 2-12 UNPAID PARKING FINES PENALTY

**12.1** Parking fines shall be paid within 21 days from the date of violation. Any fine not paid within these 21 days will be subject to an additional fee as set by the Board of Selectmen's fee schedule.

APPROVED: 04-12-1983 - BOARD OF SELECTMEN

## 12.2 IMPOUNDMENT OF MOTOR VEHICLES FOR FAILURE TO PAY PARKING TICKETS

**Applicability:** Any vehicle which has accumulated three or more notices of violation of any parking regulation or regulations made pursuant to this Ordinance issued after January 24, 1984 for which there has been neither payment of waiver fees nor issuance of court process, and which is then parked in violation of any such provision, may at the option of any Town of Kennebunk Police or other officer authorized to enforce the parking regulations of the Town of Kennebunk be immobilized in place or may be removed and stored until all waiver fees for all such outstanding notices of violations have been paid including all costs for towing, notice preservation and storage of said vehicle.

**Procedure:** The Police Officer requesting such removal shall at the time of such removal notify the dispatcher of the intended storage location of the subject motor vehicle. Such information shall be recorded by the dispatcher for the use of the Chief of Police or his duly authorized representative. The Chief of Police shall notify by registered mail the registered owner of such vehicle within five business days of the impoundment thereof, the storage location of such vehicle and the requirements for release.

**Release of Vehicles:** Any person having custody of a motor vehicle, pursuant to the provisions of this Ordinance or of the means to release such immobilized vehicle, shall not release it until the individual requesting its release presents satisfactory evidence of his or her right to possession and signs a receipt therefore and the Chief of Police or his duly authorized representative certifies that all waiver fees and all charges have been paid including all costs for towing, notice preservation and storage of said vehicle as established pursuant to this Ordinance.

<b>Fees:</b>	Towing:	Actual charge by contractor.
	Storage:	Actual charge by contractor

The charges by the Town for vehicles impounded or stored on Town property shall be as set by the Board of Selectmen's fee schedule for the impoundment and storage for not more than four (4) days from the date and time of impoundment, and shall be as set by the Board of Selectmen's fee schedule for each day thereafter.

**Bond:** Whenever any person requests the right to post bond, such bond shall be given in cash and a receipt given therefore. Such bond money shall be refunded in the amount of the waiver fee for each alleged violation upon acceptance by such person of service of process initiating a court proceeding to determine his or her liability for the prescribed penalty for such alleged violation. Any bond shall be forfeited unless the person posting it requests and accepts service of such process from the Chief of Police or his or her designated representative within thirty (30) days of posting unless prevented from so doing by the actions or inaction of the Town of Kennebunk.

**Refund of Charges for Impoundment:** Whenever any person obtains a determination from a Court of competent jurisdiction that the vehicle was not parked in violation at the time it was impounded pursuant to this Ordinance, such person shall be reimbursed for the charges for immobilization, or for towing and storage if paid, and if such charges have not then been paid they shall be promptly paid or cancelled by the Town.

**Violations:** It shall be a violation of this Ordinance for any person to tamper with or to attempt to remove any immobilizing device attached to a vehicle or to obstruct or attempt to prevent the removal of a vehicle as provided herein. The penalty for any such violation shall be as set by the Board of Selectmen's fee schedule.

**12.3 Fees** shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED 01-24-1984; AMENDED: 06-12-2002

## **2-13 ENGINE BRAKING ORDINANCE**

- 13.1** It shall be unlawful for the driver of any vehicle to use or operate, or cause to be used or operated in the 'Quiet Zones' as located within the Town of Kennebunk, except for public safety vehicles, any engine brake, compression brake, or mechanical exhaust device to aid in the braking or deceleration of any vehicle that results in excessive, loud, unusual or explosive noise from such vehicle. The 'Quiet Zones' shall be determined by the Town Safety Committee (Police, Fire, CEO) and approved by the Board of Selectmen.
- 13.2** A violation of this ordinance shall be subject to a fine as set by the Board of Selectmen's fee schedule.

ADOPTED 06-09-2004; AMENDED 06-21-2011

**SECTION 3**

**ORDINANCES RELATING TO PUBLIC SAFETY AND  
HEALTH**

### **3-1 WATER CLOSETS**

Deleted June 11, 2003

### **3-2 RUBBISH**

**2.1** No person shall deposit rubbish of any kind, including without limitation any recyclables, household waste, tires, appliances, universal waste, hazardous waste, construction waste or any other waste or debris in the public ways or streets of the Town of Kennebunk. Any person, who violates any provision of this section (3-2.1), upon adjudication, shall be punished by a fine as set by the Board of Selectmen's fee schedule, together with costs for use of the Municipality. The fine for a second offense shall be as set by the Board of Selectmen's fee schedule. 03-02-1908; 06-13-2001, 06-12-2002, 06-21-2011

**2.2** All conveyances of rubbish using the public ways or streets of the Town of Kennebunk shall be covered and protected so that no rubbish shall fall, or be blown, from the carrier. Any carrier, who violates any provision of this section (3-2.2), upon adjudication, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality. 03-02-1936; 06-13-2001; 06-12-2002

**2.3** No person shall dump any rubbish or debris along the bank of any river or stream or into the water or upon the ice of such river or stream, within the Town of Kennebunk, or within fifty (50) feet of any highway within the Town of Kennebunk. Any person who violates any provision of this section (3-2.3), upon adjudication shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality. 06-13-2001

**2.4** No person shall dump any rubbish of any kind in any public areas within the boundaries of the Town of Kennebunk. Any person, who violates any provision of this section (3-2.4), upon adjudication, shall be punished by a fine as set by the Board of Selectmen's fee schedule, together with costs for use of the Municipality. 06-13-2001; 06-12-2002

**2.5** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. 06-12-2002

03-01-1937; AMENDED 11-15-1971; AMENDED 06-13-2001; AMENDED 06-12-2002;  
AMENDED 06-21-2011

### **3-3 MUNICIPAL DUMP**

Deleted June 21, 2011

### **3-4 DOGS**

**4.1** It shall be unlawful for any person, firm or organization to permit any dog to roam, run-at-large, or be unattended within the limits of the Town of Kennebunk. Dogs must be leashed and/or the leash must remain in the owner's hand while under voice control at all times, on all public ways and property, except when in a vehicle. Working dogs (hunting) are excepted and then only during periods of hunting and/or training. Seeing eye dogs (or service dogs) are exempt. The Town's posted dog park rules at the Sea Road location apply for that park only.

Any person, persons, firm or corporation who violates the provision of this Ordinance, upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for the use of the Municipality.

ADOPTED: 03-1971; AMENDED: 02-21-2008; AMENDED 06-21-2011

**4.2** No person shall own, keep or harbor any dog which by frequent or habitual barking, howling or yelping shall disturb the peace of any person or persons after being previously warned by a law enforcement or animal control officer to correct said disturbance. This section shall not apply to The Animal Welfare Society, Inc. located on the Holland Road in West Kennebunk.

Any person, persons, firm or corporation who violates Section 3-4.2, upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for the use of the Municipality.

ADOPTED: 09-30-1985; AMENDED 06-09-2004

**4.3** It shall be a violation of this ordinance for any person who owns, possesses, or controls a dog to fail to remove and dispose of any feces left by his/her dog on any public beach, pathway, sidewalk, street, park or other publicly owned property of the Town of Kennebunk.

**a)** For the purpose of this section, disposal shall be accomplished by transporting such feces to an appropriate waste receptacle.

**b)** This ordinance shall not apply to a dog accompanying any handicapped person, who, by reason of his/her handicap, is physically unable to comply with the requirements of this ordinance.

**c)** Any person found to be in violation of this section shall, upon conviction, be punished by a fine as set by the Board of Selectmen's fee schedule for each offense.

ADPOTED: 06-09-1992

**4.3.1** It shall be a violation of this ordinance for any person who owns, possesses, or controls a horse, llama, farm animal or other domestic animal to fail to remove and dispose of any feces left by his/her animal on any beach, path, trail, sidewalk, street or park in the Town of Kennebunk.

a) For the purposes of this section, disposal shall be accomplished by transporting such feces to an appropriate waste receptacle.

b) Any person found to be in violation of this section shall, upon adjudication, be punished by a fine as set by the Boards of Selectmen's fee schedule for each offense.

ADOPTED: 02-21-2008; AMENDED 06-21-2011; AMENDED 06-12-2012

**4.4** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

### **3-5 PUBLIC BEACHES**

#### **I) STATEMENT OF PURPOSE**

The purpose of this ordinance is to provide for the safety, enjoyment, health and welfare of all persons using any public beach located in the Town of Kennebunk by authorizing, among other things, the closure of, and the removal of persons from the Town beaches and adjacent waters due to unsafe or hazardous conditions, including, but not limited to, dangerous surf or wave action or unhealthy water quality.

The purpose is to further provide a means of maintenance, operation and protection of the public beaches and to provide a family oriented atmosphere at an environmentally friendly and enjoyable public beach for residents, residents' visitors and land/property owners of Kennebunk.

This Ordinance is adopted pursuant to Municipal Home Rule ordinance authority and M.R.S.A., Title 30-A, Section 3001.

#### **II) ADMINISTRATION, AUTHORITY, APPLICABILITY, EFFECTIVE DATE**

- A) Administration of the public beaches will be by the Municipal Officers. They are responsible for the maintenance, operation and general stewardship of all of the Kennebunk public beaches.
- B) Authority to act: The Municipal Officers shall oversee the public beach areas and shall adopt, after public notice and hearing, establish, and as necessary, revise, any additional rules and regulations that they may deem necessary to maintain safety. These safety rules and regulations, not inconsistent with this Ordinance, shall be posted in a conspicuous place at the public beaches and shall have the full force and effect of the law.
- C) Applicability: This Ordinance shall apply to Town owned property at all public beaches.
- D) Effective Date: This ordinance took effect upon adoption by the Town of Kennebunk on 6-11-2003.

#### **III) DEFINITIONS**

- A) 'Town' is the Town of Kennebunk, Maine.
- B) 'Municipal Officers' means the Board of Selectmen
- C) 'Public Beaches' are the three public beaches owned by the Town, Kennebunk Beach, Middle Beach and Gooch's Beach located along Beach Avenue, and the portion of Parson's Beach that is leased to the Town for use as a public beach.
- D) 'Adjacent waters' shall mean the ocean waters along the shoreline of the Town beaches and extending seaward to the edge of the intertidal zone, as defined by state law.
- E) 'Enforcement Authority' shall mean the Town Manager, Health Officer, Fire Chief, Police Chief or any of his designees, any lifeguard employed by the Town, or any other designated Town Official duly authorized to enforce the provisions of the Ordinance or Town regulations.
- F) 'Warning flags' shall mean flags that are posted at the lifeguard stations:

- A **red flag** means the beach is closed to swimming and/or water contact.
- An **orange flag** indicates that all beaches are closed to swimming and all water contact except surfing only
- A **yellow flag** indicates an advisory notice that there is a potential health risk or dangerous surf conditions – “Swim at Your Own Risk”..
- A **green flag** indicates the beach is open for swimming and water contact.

#### **IV) GENERAL RULES**

The following rules apply to the beaches:

##### **Conduct and Use**

- 1) Regular opening and closing dates for swimming with life guards on duty shall be established by the enforcement authority and approved by the Municipal Officers.
- 2) Picnicking shall be allowed on the public beaches.
- 3) Fires: Fires shall not be allowed on the public beaches, with the exception of cooking fires only on the Middle Beach side of Narragansett Point by permit only obtained from the local Fire Department.
- 4) Offensive behavior: No person shall engage in any indecent language or loud noise which would be offensive to any reasonable person or engage in any disorderly conduct or behavior tending to breach the public peace.
- 5) Children under 12 years of age must be accompanied by someone 16 years of age or older.
- 6) Seasonal activities and use other than swimming and sun bathing shall be as permitted by the enforcement authority, as consistent with the Ordinance’s Statement of Purpose.
- 7) No sand, gravel or rocks shall be removed from the beach areas.
- 8) Marine life may not be harvested for commercial purposes.
- 9) Except as otherwise provided for by state law, the Selectmen may impose further limitations on the use of the Town’s public beaches for surfing, kayaking and other recreational activities.
- 10) No person, firm or entity shall operate a private business or other entity on any Town public beach in a manner that unreasonably (a) interferes with the general public’s enjoyment and use of the beach; (b) poses a safety risk to the participants or the general public; or (c) causes damage to public property. Any for-profit private business operating on a Town public beach must obtain a peddler’s permit as set forth in 6-1 of this Ordinance. The Municipal Officers may impose further limitations on the operation of private businesses and other entities on Town public beaches as necessary to enforce this provision.

##### **Sanitation**

- a. No bottles, cans or other trash shall be left on the beaches. Users shall carry out what they carried in.
- b. Commencing June 15 and ending on the day following Labor Day of each year, it shall be unlawful for animals of any kind to be on any public beaches of the Town between the hours of 9:00 AM and 5:00 PM, prevailing time. This is not

to be construed as limiting the use of seeing eye or disability assistance animals.

- c. No trash whatsoever will be put in the portable toilets.
- d. Children shall not be allowed to swim in disposable diapers. All children who require diapers are required to wear rubber pants that will contain all human waste.

## **Safety**

- 1) No motorized watercraft shall be moored, launched or beached.
- 2) There shall be no water skiing permitted from the beach.
- 3) No motor vehicle or motor driven cycle, bicycle, motor cart, or any motor driven or otherwise propelled contrivance shall be allowed to be placed or in any way operated or moved on or along any of the public beaches within the Town.

This prohibition shall also include horses and horse-drawn vehicles during the period 15 May to 15 September, but shall exclude all emergency type vehicles. Any exception for any emergency shall be granted only by the Municipal Officers.

- 4) All parking shall be in compliance with Section 2-5 Beach Parking Permits Ordinance of the Town of Kennebunk Ordinances.

## **Prohibited Activities**

The following activities are prohibited:

- 1) The use of soap, shampoo or other cleaning agents.
- 2) The use of glass containers.
- 3) Activities which endanger persons or willful damage to any public property at the beaches, including and without limiting to, portable toilets, benches, trees, brush or other vegetation.
- 4) The use of tents or overnight camping.
- 5) Possession or consumption of alcoholic beverages and illegal drugs.
- 6) Smoking on any public beach excluding the designated smoking area.
- 7) Commercial soliciting.
- 8) Any type of fire on the public beaches, with the exception of cooking fires only on the Middle Beach side of Narragansett Point by permit only obtained from the local Fire Department. Upon obtaining the fire permit and if the activity will involve more than 30 participants, you must complete an application available in the Town Clerk's Office. The intent of the application is to limit the number of users on any particular day and to alert various town departments that the activity is taking place
- 9) There shall be no participation in activities or games employing the use of baseballs, footballs, golf balls or the like, in any beach area between the hours of 9:00 AM and 5:00 PM, prevailing time, nor in any activity which may be detrimental to the use and enjoyment of said beach areas as provided by the Statement of Purpose, or which may be injurious to the public health, safety and welfare.

- 10) No campers, so-called, or vehicles designed for sleeping purposes shall be allowed to remain in beach areas between one-half hour after sunset to one-half hour before sunrise, prevailing time.

Any person, firm or corporation who violates Article IV upon adjudication, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs to be used by the Municipality of Kennebunk. Any person cited for a violation may settle and compromise the claim against them by paying the Town the sum as set by the Board of Selectmen's fee schedule. Such payment may be made at the Police Station within 7 days of the time of the alleged offense. 07-23-1985

## **V) REGULATIONS**

- 1) The enforcement authority may recall and remove any person from the water when the person shall be in danger of drowning or becoming imperiled, or may imperil the safety of others, all of which shall be determined in the sole discretion of the life-guards duly appointed by the authority having jurisdiction.

- 2) The enforcement authority may recall and remove from the ocean waters and the surf adjoining the water any person who shall be in the ocean waters at any distance at any time when the condition of the wind, water, weather or a hazard, including the physical or mental condition of the person in the ocean waters, shall be such, in the sole discretion of those personnel, as hereinabove described, as to constitute a danger to the health, life or safety of that person or to other persons within the ocean waters.

- 3) The enforcement authority may recall and remove from the ocean waters and the surf adjoining the water any person at any distance at any time when the condition of the water is unsafe due to rainfall, urban runoff, sewage spills, microbiological contamination, or other public health concerns.

- 4) Beaches can only be closed to surfers by either the Town Manager or the Fire Chief or his designee.

## **VI) VIOLATIONS and PENALTY**

Any person who fails or refuses to comply with any lawful order, discretion or command given under authority of this Ordinance or regulations promulgated hereunder, or who resists, obstructs or impedes any lawful attempt made under authority of this Ordinance to recall or remove any person from the water, commits a violation punishable by a civil penalty as set by the Board of Selectmen's Fee Schedule payable to the Town together with costs for use of the Town.

## **VII) ENFORCEMENT**

This Ordinance shall be enforced by the Town Manager, Fire Chief and/or his designee(s), Health Officer, Police, any lifeguard employed by the Town, or any other

designated Town Official duly authorized to enforce the provisions of this Ordinance or regulations promulgated hereunder.

**VIII) SEVERABILITY**

Should any section or provision of this Ordinance or regulations promulgated hereunder be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not invalidate any other section or provision of this Ordinance.

**IX) AMENDMENT**

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

Adopted by Town Meeting Vote: 06-11-2003; AMENDED 06-21-2011; AMENDED 06-09-2015

### **3-6 PUBLIC CONDUCT**

**6.1** No person or persons shall loiter or stand upon any sidewalk or upon the corner of any street or in any street in such a way as to impede public travel.

**6.2** No person shall play any game within the Town of Kennebunk when such playing would unreasonably endanger the life, health or property of any person.

**6.3** No person shall in any street, lane or public place within the limits of the Town of Kennebunk, willfully and mischievously make any loud and unusual noises by shouting, sounding horns or any implement or thing, or shall in any unruly or boisterous manner disturb the peace and good order of the citizens thereof.

**6.4** Any person who violates any provision of this section, (3-6) upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Town.

**6.5** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. 06-12-2002

PASSED 03-04-1878; AMENDED 11-15-1971; AMENDED 06-12-2002; AMENDED 06-21-2011

### **3-7 FIREARM DISCHARGE ORDINANCE**

**7.1** It shall be unlawful to shoot or discharge a firearm within the Town of Kennebunk in the following areas:

**A)** Within 500 feet of any residential or commercial structure.

**B)** Within 500 feet of any public or private school property, except as used in supervised educational programs, authorized by the school.

**C)** The following parks, playgrounds and trails and within 500 feet thereof:

Rogers Pond, at Water Street

West Kennebunk Recreation Area, at Holland Road

Route 1 Picnic Area, at York Street (Rte 1 South)

Parson's Field, at Park Street

Lafayette Park, at Storer Street

Lower Village Field, at School Lane

Lloyd G. Nedeau Memorial Park, at Clear Brook Crossing

Memorial Park, at Main Street

Rotary Park, at Water Street

Wiggins Pond, at Wood Pond Lane

Washington Park, at Summer Street

Public and private beaches, as described in Section 3-5

Skateboard Park, at Factory Pasture Lane

Wonderbrook Park and the Bridle Path (from the Sea Road to the former Railroad Station), with the exception that this does not prohibit the discharge of shotguns over the Mousam River, marshland and other bodies of water.

**7.2** It shall be unlawful to shoot or discharge a firearm in such a way that it causes the projectile to penetrate within the following areas:

**A)** Within 500 feet of any residential or commercial structure, public or private school property, athletic field and/or Town park, playground or trail, as listed in Section 7.1.C.

**B)** Within 300 feet of the Bridle Path (from Sea Road to the former Railroad Station) and Wonderbrook Park.

**7.3** Exceptions: The following exceptions to the above restrictions shall be provided for:

**A)** Law Enforcement Officers in the performance of their official duties.

**B)** Persons who discharge firearms to protect life or property.

**C)** Persons on their own land or on land on which they are tenants, and others having their expressed consent provided that they:

**1)** Do not discharge within 500 feet of a neighbor's commercial or residential structure without his/her expressed consent.

**2)** Do not cause a projectile to penetrate within 500 feet of a neighbor's commercial or residential structure without his/her expressed consent.

**3)** Are otherwise in compliance with applicable state statutes and regulations.

For the purpose of this ordinance, a landlord's permission does not supersede the wishes of the tenant.

**D)** Persons using firing ranges owned and operated by the Kennebunk Fish and Game Club, Inc. presently located on Branch Road, Kennebunk.

**7.4** It shall be unlawful to shoot or discharge any firearm in a careless or negligent manner so as to endanger the life of any person or their property or create a risk of bodily injury.

**7.5** For the purpose of this ordinance, firearm shall be defined as an instrument used in the propulsion of shot, shell or bullets by the action of gunpowder exploded within.

**7.6** Any person who violates any provision of this ordinance shall be punished by a fine as set by the Board of Selectmen's fee schedule, together with costs for use of the municipality.

**7.7** Should any section or provision of this ordinance be declared invalid or inoperative by legislative enactment or become unenforceable for any other reason, that occurrence shall not invalidate any other section or provision of this ordinance.

**7.8** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. ( 06-12-2002)

ADOPTED 06-09-1992; AMENDED 06-12-2002; AMENDED 06-21-2011

### **3-8 CONCEALED WEAPON PERMIT APPLICATION FEE**

**8.1** Pursuant to Title 25, M.R.S.A. Section 2003, sub-section 1.E.4, the application fee for a permit to carry concealed weapons shall be the sum as set by the Board of Selectmen's fee schedule in the case of an original application and the sum as set by the Board of Selectmen's fee schedule in the case of a renewal application. Change of address (permit holder moves from one municipality to another) fee pursuant to Title 25, Section 2005 is \$2.00. This application and fee shall cover any number of weapons involved and any permit issued.

**8.2** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 09-14-1981;  
FEES AMOUNTS AMENDED TO CONFORM TO STATE LAW

### **3-9 OUT-OF-DOOR BURNING**

**9.1** As provided for herein, out-of-door burning of wood products, vegetation debris and fuel in the Town of Kennebunk shall require a burning permit issued by either the Kennebunk Fire Department or the Maine Forest Service; provided, however that the recreational use of an outdoor gas or charcoal grill for food preparation shall not require a local burning permit.

**9.2** It shall be unlawful for any person, firm or corporation to burn debris, such as manufactured products or household rubbish/waste. This Ordinance only allows for the burning of wood products, vegetation debris, and fuel, as set forth herein. All out-of-door burning must follow state statute and the applicable rules set forth by the Maine Department of Environmental Protection and the Maine Department of Conservation. Permits for the burning of fuel shall only be issued for firefighter training and the containment or control of fuel spills, in accordance with state and federal law. Burning permits may be obtained from the Town Forest Fire Warden or his designee at the Kennebunk Central Fire Station or through the Maine Forest Service. Burning permits issued locally shall be granted at the discretion of the Town Forest Fire Warden or his designee. Moisture, wind, time of day, length of burning period required, availability of sufficient fire personnel and equipment and any other condition deemed relevant to granting a burning permit will be considered. Burning permits shall only be issued for days that the Maine Forest Service has designated as Class 1 or 2 in its Forest Fire Danger Report.

**9.3 Allowable Burning Times:**

- (1) Monday through Friday between the hours of 5 PM and 9 AM for residential uses.
- (2) Monday through Friday during daylight hours, or another time period as specified by the Town Forest Fire Warden or his designee, for construction uses.
- (3) Weekends during the day and evenings for both residential and construction uses.

**9.4** Burning permits may be revoked whenever in the opinion of the Town Forest Fire Warden or his designee there appears to be a serious threat of fire hazard or a nuisance is created that affects neighboring homes or interferes with the normal flow of highway traffic due to poor visibility from smoke conditions. The Town Forest Fire Warden may prohibit all burning during such periods and shall revoke all permits already issued until such time as the conditions of the hazard have subsided.

**9.5** Permits for burning wood products for the purpose of cooking or warming fires in an area approved and inspected by the Town Forest Fire Warden, may be granted for a period of one year.

**9.6** The Town of Kennebunk provides curbside waste pick-up and prohibits the use of incinerators.

**9.7** Any person who violates any provision of this Section, (3-9) upon conviction, shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality. Each day of burning violation constitutes a separate violation.

**9.8** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 03-07-1978; AMENDED 06-12-2002; AMENDED 06-21-2011

### **3-10 SEPTAGE EFFLUENT**

**10.1** On and after the date of the construction of a septage effluent facility within the Town of Kennebunk, and after commencement of operation of the same by the Kennebunk Sewer District, it shall be unlawful for any person, firm or corporation to dispose of septic tank effluent, holding tank effluent, and/or cesspool effluent at any location within the Town of Kennebunk except in compliance with the terms of this section or at a site for disposal of such wastes that has been approved by the state.

**10.2** The use of the septage effluent facility shall be available to residents of the Town of Kennebunk, real estate property owners within the Town of Kennebunk and conveyors of septage effluent from subsurface sewerage disposal systems situated within the Town of Kennebunk.

**10.3** Any person, firm or corporation who seeks to dispose of septage effluent in the septage effluent facility shall make application for a permit with the Kennebunk Sewer District.

PASSED 11-30-1976; AMENDED 06-12-2002; AMENDED 06-21-2011

### **3-11 POLICE/FIRE ALARMS**

#### **General Policies and Requirements**

**11.1** Any residential, commercial or industrial structure or portion thereof within the Town of Kennebunk that has a sprinkler system, fire alarm or security alarm must have a “Knox Box” key security box installed to allow the Fire Department or the Police Department to enter the structure to investigate and secure the alarm or sprinkler system. Knox Box applications may be obtained from the Fire Chief.

**11.2** Any responsible party, including without limitation an owner, lessee or proprietor, having a vested interest in a structure or portion thereof that has a monitored alarm system, shall provide his or her contact information to the Town of Kennebunk, as well as the names, addresses and telephone numbers of three local persons who will be accountable for the property in the absence of said responsible party, at least one of whom will be available to respond at the request of the Town of Kennebunk to provide access to the premises to assist in resetting the system.

#### **11.3 Municipal Fees**

A fee shall be charged by the Town of Kennebunk on an annual basis. Said fee shall be set by the Board of Selectmen. The Board may set separate levels of fees based on the type of applicant.

#### **11.4 False Alarm Penalty Fees**

Three false alarms of each type (police or fire) per unit, per year will be allowed without penalty.

**11.5** If the Police Department is notified by an authorized person that the security alarm was inadvertently tripped and the officer determines at his or her discretion that no response is required, said instance shall not be counted as a false alarm.

**11.6** If the alarm was activated by electrical power failure off the premises, said instance shall not be considered the fault of the owner and shall not be counted as a false alarm.

**11.7** After three false fire alarms during a one year period, the owner shall be assessed a penalty as set by the Board of Selectmen’s fee schedule for each additional instance, payable to the Town of Kennebunk. After three false police alarms during a one year period, the owner shall be assessed a penalty as set by the Board of Selectmen’s fee schedule for each additional instance, payable to the Town of Kennebunk.

**11.8** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 09-30-1985; AMENDED 10-27-1987; AMENDED 06-12-2002; AMENDED 06-21-2011

### **3-12 SMOKE DETECTOR ORDINANCE**

**12.1** It shall be the responsibility of the owner of each new dwelling unit and each new and existing rental unit to install and maintain smoke detectors in each such dwelling as hereinafter provided. Said smoke detectors shall be capable of sensing visible or invisible particles of combustion and providing a suitable audible alarm thereof. Said alarms shall be installed within twelve months of the adoption of this Ordinance in the manner hereinafter provided. Failure to install smoke detectors as and where required by said date will subject the property owner to the penalties as hereinafter set forth.

#### **12.2 Location**

At least one smoke detector shall be installed on every occupied level of the dwelling unit.

At least one smoke detector shall be installed at the head (top) of each stairway leading up to an occupied area in such a manner as to insure that rising smoke is not obstructed in reaching the detector and the detector intercepts rising smoke before it reaches the sleeping area.

**12.3** As an alternative to self-contained smoke detectors, an approved detection system may be installed. Each fire detection system must be individually approved and a permit issued therefore by the Kennebunk Fire Department.

**12.4** All devices, combinations of devices and equipment required herein are to be installed in conformance with this Section 3-12 and with all other applicable state and municipal building codes. Upon the rental, sale or renovation of any dwelling unit, the Fire Department may check all devices, combination of devices, and equipment required herein which is in place. The Fire Department may, in each such case, determine whether replacement of existing installation shall be required or additional installation shall be required or some combination thereof shall be required. Renovation as used in this Section 3-12 means such renovation as requires the issuance of a building permit or permits.

**12.5** In new residential dwellings, smoke detectors shall be wired directly (hard-wired) to the buildings' power supply. In existing dwellings within multi-family buildings, the detectors shall meet multi-family building power source requirements of state law, or in the absence of state law, the requirements hereunder covering other existing dwellings. In other existing dwellings said detectors may be powered by self-monitored battery or operated in a plug-in outlet which is fitted with a plug restrainer device, provided the outlet is not controlled by any switch other than the main power supply.

**12.6** Section 3-12 is intended to be used with and supplemented by the applicable provisions of the National Fire Protection Association (NFPA) 72 National Fire Alarm Code and the NFPA 101 Life Safety Code, as adopted by the state, and Chapter 317 of Title 25 Maine Revised Statutes Section 2464, entitled "Smoke Detectors", as may be amended from time to time; provided, however, that if there is any conflict between this Section 3-12, including any

rules and regulations adopted pursuant thereto, and the said supplemental standards, the more restrictive provisions shall prevail.

**12.7** Any person in violation of any of the provisions of Section 3-12 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount as set by the Board of Selectmen's fee schedule. Each day, after a two-week time for correction of the violation has been given in an order, shall constitute a continuing violation and the amount of fine as set by the Board of Selectmen's fee schedule each day said violation continues

**12.8** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

AMENDED 06-21-2011

## **3-13 OVERBOARD DISCHARGE ORDINANCE**

### **13.1 Purposes**

**1.1** To prohibit the proliferation of independently owned sewage treatment systems that discharge effluent, treated or otherwise, into the waterbodies and watercourses within the Town of Kennebunk.

**1.2** To protect the existing quality of Kennebunk's waterbodies and watercourses; and

**1.3** To recognize the relative fragility or vulnerability of waterbodies and watercourses.

### **13.2 Definitions**

**Waterbodies:** Any pond or lake, whether containing freshwater or saltwater. The term 'water body' shall also include the Atlantic Ocean.

**Watercourses:** Any stream, brook, creek or river, whether containing freshwater or saltwater.

**Overboard Discharge System:** A sewage collection, treatment and disposal system, which discharges effluent, whether treated or otherwise, directly into any water body or watercourse.

**Legislative Body:** The voters of the Town of Kennebunk.

**Ordinance:** The use of the term 'Ordinance' shall mean Overboard Discharge Ordinance.

### **13.3 Prohibition of New Systems**

**3.1** No person, firm, corporation or other legal entity shall construct, install or maintain an 'overboard discharge system' as defined herein.

**3.2** This Ordinance will not apply to overboard discharge systems installed and operating prior to the effective date of this Ordinance as long as such systems are installed and operating in compliance with all state water pollution laws and regulations and state and local plumbing codes unless such systems are by the terms of those laws, regulations and codes, exempt from their requirements.

**3.3** This Ordinance will not apply to overboard discharge systems licensed by the Maine Department of Environmental Protection but not yet installed and operating prior to the effective date of this Ordinance.

## **13.4 Existing Systems**

**4.1** In cases involving overboard discharge systems which were installed and operating, or licensed by the Maine Department of Environmental Protection but not yet installed or operating, prior to the effective date of this Ordinance, the owners of such systems shall file drawings and evidence of maintenance and monitoring of such systems. This information shall be filed with the Planning Board within 90 days of the effective date of this Ordinance.

## **13.5 General**

**5.1** The effective date of the Ordinance shall be the date of adoption of the Ordinance by the legislative body.

**5.2** This Ordinance is adopted under the Town of Kennebunk's general police powers under the authority of Home Rule (Title 30-A M.R.S.A. Section 3001).

**5.3** If any provision of the Ordinance conflicts with any other provisions of other ordinances of the Town of Kennebunk, or with any regulations of the Maine Department of Environmental Protection, the stricter provisions shall apply.

**5.4** Should any section or provision of this Ordinance be declared by the Courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **13.6 Violations**

**6.1** Failure to conform to the provisions of the Ordinance shall constitute a violation. A written notice of violation shall be sent by the Code Enforcement Officer to any person, firm, corporation or other legal entity who owns and operates an overboard discharge system in non-compliance with this Ordinance. This notice shall be sent via certified mail, return receipt requested, and shall inform the owner of the deadline for compliance. The owner shall be given seven (7) days from receipt of the notice to comply. If the owner does not comply within the specified time period, each day that the overboard discharge system is allowed to discharge, after the notice of violation is received, shall constitute a separate offense. A fine as set by the Board of Selectmen's fee schedule shall be levied for each offense. All such fines shall be paid to the Town of Kennebunk to be used by it for its general purposes.

**13.7** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED 12-16-1986; AMENDED 06-12-2002; AMENDED 06-21-2011

## **3-14 SOLID WASTE, PAY AS YOU THROW, RECYCLING AND RESIDENTIAL COMPOST ORDINANCE**

### **Section I: Title**

This Ordinance shall be known as the Town of Kennebunk, Maine, Solid Waste, Pay as You Throw, Recycling and Residential Compost Ordinance.

### **Section II: Enabling Legislation**

This Ordinance is enacted pursuant to the authority granted in 30-A M.R.S.A. Sections 3001 and 3002 and 38 M.R.S.A. Sections 1304-B and 1305.

### **Section III: Purpose**

The purpose of this Ordinance is to protect the health, safety and welfare of the citizens of Kennebunk through the management of the collection, transportation and disposal of residential solid waste and recycling in accordance with the provisions of Title 38 M.R.S.A. § 1305, as amended .

#### **Solid Waste Disposal:**

The Town of Kennebunk has a statutory obligation to provide solid waste disposal services for domestic and commercial solid waste generated within the municipality and is authorized to provide such services for industrial waste and sewage treatment plant sludge, pursuant to 38 M.R.S.A Section 1305, Subsection 1.

#### **Recycling:**

To allow the Town to mandate the recycling of solid waste materials that do not require incineration or burial through its curbside collection service, to ensure that State goals regarding recycling are met and lessen degradation to the environment by reducing the volume of waste placed in the long-term disposal sites.

### **Section IV: Definitions**

All terms not specifically defined herein shall have their ordinary meaning; words used in the present tense include the future and the plural includes the singular.

**A) Acceptable Solid Waste:** All solid wastes generated within the Town, including ordinary household, municipal, institutional and commercial wastes, as designated by the Municipal Officers in accordance with current disposal agreements, with the following exceptions:

- 1) Demolition or construction debris from building and roadway projects or locations;

- 2) Liquid wastes or sludges;
- 3) Abandoned or junk vehicles or parts or accessories from vehicles;
- 4) Hazardous waste, that is waste with inherent properties that make it dangerous to manage by ordinary means, including but not limited to: chemicals, explosives, pathological wastes, radioactive wastes, toxic wastes and other wastes defined as hazardous by the State of Maine or the Resource Conservation and Recovery Act of 1976, as amended, or other federal, state or local laws, regulations, orders or other actions promulgated or taken with respect thereto.
- 5) Dead animals or portions thereof;
- 6) Pathological wastes, surgical and medical dressings;
- 7) Water treatment residues;
- 8) Tree stumps;
- 9) Tannery sludge;
- 10) Waste oil;
- 11) Ashes; and
- 12) Discarded 'white goods' including, but not limited to: freezers, stoves, refrigerators and washing machines.

**B) Collection Facility:** A building, container or designated area in which Acceptable Waste and Recyclables are deposited and temporarily stored for transshipment to the Town's designated Transfer/Recycling facilities.

**C) Collection Unit:** A single residential dwelling, or single commercial, industrial, institutional or municipal establishment, which produces Acceptable Waste and Recyclables within the Town of Kennebunk.

**D) Commercial Waste:** Acceptable waste that is non-residential and is picked up and disposed of by a private contractor.

**E) Designated Disposal Facility:** The facility designated by this Ordinance as the disposal facility for residential Solid Waste collected in a curbside collection program and pursuant to an existing agreement for collection and disposal services.

**F) Disposal Facility:** The facility designated by the Municipality as the storage and/or disposal site(s) for Unacceptable Waste and Recyclables.

**G) Residential Compost:** Acceptable Solid Waste generated by residential Collection Units that generally consists of decayed organic materials and has been designated by the Municipal Officers as acceptable pursuant to current agreements for collection and disposal of the same.

**H) Large household furnishings:** All large and/or bulky articles other than white goods actually used in the home and which equip it for living (chairs, sofas, tables, beds, carpets).

**I) Municipality/Town:** The Town of Kennebunk, Maine.

**J) Municipal Officers/Board:** The Board of Selectmen.

**K) Pay as You Throw:** A user fee system for disposal of municipal solid waste; also known as “pay per bag.” The user fee plan promotes equity and fairness by linking the cost of waste disposal to the amount of waste actually generated by a person or household.

**L) Recyclables:** Solid Waste that is designated by the Municipal Officers pursuant to current disposal agreements as suitable for collection and disposal under this Ordinance, including, but not limited to, certain paper, cardboard, glass, plastics, aluminum, tin and steel products.

**M) Refuse bags:** Bags designed for the collection and storage of residential solid waste and approved by the Municipal Officers for such use.

**N) Refuse containers:** Containers designed for the collection and storage of Refuse Bags and Recyclables, as approved by the Municipal Officers and provided to residential Collection Units for such use. All containers shall be closed for pickup.

**O) Solid Waste:** Useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse. Solid waste shall not include septic tank sludge or agricultural or hazardous wastes. Collection and disposal of Solid Waste pursuant to this Ordinance shall be limited to Acceptable Solid Waste as defined herein and as determined by the Municipal Officers.

**P) Transfer Station:** The facility designated in Town Ordinance 3-16 that processes Acceptable Waste and Recyclables generated and collected in the municipality, but not collected as part of a curbside collection program or pursuant to an existing collection and disposal agreement.

**Q) Unacceptable Solid Waste:** All solid waste of the type municipalities are required to regulate by 38 M.R.S.A. Section 1305, as amended, that are excepted from the definition of Acceptable Waste and any other items as determined by the Board of Selectmen.

**R) White goods (major appliances):** Any large and/or bulky household mechanism (as a refrigerator, washer, dryer, stove, etc.) ordinarily operated by gas or electric current.

## **Section V: Designation**

In accordance with the provisions of 38 M.R.S.A. Section 1304-B, the Municipal Officers hereby designate the Casella Waste facility located at 590 County Road in Westbrook, Maine as the facility for disposal of the Town's Solid Waste for the purposes cited in Section III of this Ordinance.

## **Section VI: Regulation of Acceptable Waste, Recyclables and Residential Compost**

The accumulation, collection, transportation and disposal of Acceptable Waste, Recyclables and Residential Compost generated within the Municipality shall be regulated in the following manner:

### **A) Acceptable Solid Waste and Recycling Collection Provided**

The Town of Kennebunk shall establish a system of regular curbside collection of Acceptable Solid Waste and single stream recycling materials for transportation to and disposal at the Designated Disposal Facility. Collection shall consist of once per week curbside collection of all Acceptable Solid Wastes and Recyclable Materials, from Collection Units as determined by the Board of Selectmen and pursuant to the requirements of this Ordinance.

### **B) Acceptable Residential Compost**

The Town will authorize one licensed vendor for Residential Compost to be collected. Collection shall consist of once per week curbside collection of acceptable composting items in approved containers. The authorized vendor will provide a subscription service to residents as approved by the Board of Selectmen. Said subscription service shall be optional and paid for solely by residents who elect to use the service.

### **C) Solid Waste Disposal**

The Town of Kennebunk shall control the collection of residential acceptable wastes, its transportation and its delivery to the Designated Disposal Facility to gain management control over acceptable wastes. Collection Units shall provide acceptable wastes generated within the Town of Kennebunk in accordance with the collection schedule, as established by the Board of Selectmen, in order to ensure a supply of such wastes to the Designated Disposal Facility.

**D) Solid Waste, Recycling and Residential Compost Containers**

It shall be the responsibility of each and every Collection Unit to use those containers made available through the Town and its vendors as approved by the Board of Selectmen.

The Town will provide Refuse Containers for the collection and disposal of Acceptable Solid Waste and Recycling as determined necessary and appropriate by the Municipal Officers pursuant to existing agreements for curbside collection and disposal of the same.

The designated vendor will provide Containers for the collection and disposal of Residential Compost to those who subscribe to its paid service.

**E) Specification for Refuse Bags and Containers**

Acceptable Solid Waste set out for curbside collection by the Town's designated vendor shall be placed in Town-approved Refuse Bags in Town-approved Refuse Containers as determined by the Board of Selectmen.

Recyclable Materials set out for curbside collection by the Town's designated vendor shall be placed in Town-approved Refuse Containers as determined by the Board of Selectmen.

No Refuse Containers shall be filled to a weight in excess of that determined by the Board of Selectmen. In no case shall the Town pick up any garbage or rubbish placed in paper bags, unapproved bags or containers, or any other container such as corrugated cardboard or paperboard boxes.

Town of Kennebunk public trash receptacles shall not be subject to the size and weight limitations of this subsection.

Residential Compost set out for subscription curbside collection shall be placed in Town-approved containers as provided by the Town's designated vendor and determined by the Board of Selectmen.

**F) Limitation on Quantity of Refuse Containers**

There is no limit to the number of Town-authorized Refuse bags that can be collected. Each resident will be assigned a Refuse Container for the disposal of Acceptable Solid Waste materials and a Refuse Container for Recyclable Materials. These containers are the property of the Town. Each participant in the Residential Compost subscription service will be provided a container by the vendor and shall be subject to the vendor's rules and regulations regarding use of that container.

Each resident should exercise care in maintaining and using their container. The container is the property of the Town and cannot be sold, misused or taken out of Kennebunk. Residents are responsible for any misuse. Should a container be

destroyed by natural causes or by the Town's snow plow operations, it will be repaired or replaced.

**G) Time for Setting Out Solid Waste, Recyclable Materials and Residential Compost**

Containers shall be allowed to be put out for collection 24 hours preceding collection. Collection begins at 6:00 a.m. each collection day and the town will not make return trips for containers not put out prior to the actual pick up time. Containers must be removed from the curb or town right of way the same day as collection. Non-compliance may result in a fine/penalty authorized by the Board of Selectmen.

Residential compost containers shall be set out only on the day of collection and removed as soon as possible following collection, but not later than the end of the same day.

**H) Collection Refused**

The Town may refuse to collect any Solid Waste and/or Recyclable Materials not placed in approved Refuse Containers, which have been put out for collection in a manner that does not comply with the requirements of this Ordinance. Any Solid Waste or Recyclable Materials that have spilled from containers or have been pulled from containers by animals will not be picked up by the Town or its vendor and the person placing such items out shall clean up and dispose of the items properly, within eight (8) hours of the time of collection.

The vendor may refuse to collect any Residential Compost items not placed in an approved container, which has been put out for collection in a manner that does not comply with the requirements of this ordinance.

**I) Containers to be Properly Located for Collection**

Containers placed for collection shall be located as close to the curb or paved portion of the street as practicable but shall not be placed within the paved street portion of any street or right-of-way. All containers must have the front (serial #) of the container facing the street.

**J) Authority of Municipal Officers**

The Municipal Officers may establish such further rules and regulations governing the collection of Solid Waste, Recyclable Materials and Residential Compost not inconsistent with the provisions of this Ordinance.

**K) Holidays**

If a holiday falls on the scheduled collection day for a collection route/zone, the Solid Waste, Recyclable Materials or Residential Compost of such route/zone will be collected on the holiday or a make-up day as designated by the Public Services

Director.

L) No person shall place commercial or household Solid Waste, Recyclable Materials or Residential Compost in or around public trash receptacles. The Owner(s) of the business or residence where the solid waste originated shall be deemed responsible for illegal placement of solid waste items. (06-09-2004)

### **Section VII: Regulation of Unacceptable Waste**

The accumulation, collection, transportation and disposal of unacceptable waste generated within the municipality shall be regulated in the following manner:

**A)** To be collected, transported and disposed of at generator's expense:

- 1) Demolition or construction debris from building and roadway projects or locations;
- 2) Liquid wastes or sludges;
- 3) Abandoned or junk vehicles or parts or accessories from vehicles;
- 4) Hazardous waste;
- 5) Dead animals or portions thereof;
- 6) Pathological wastes and medical and surgical dressings;
- 7) Water treatment residues;
- 8) Tree stumps;
- 9) Tannery sludge;
- 10) Ashes; and
- 11) any other items as determined by the Board of Selectmen.

**B)** Transfer and recycling shall also take place at the Transfer Station located next to the Town garage and identified in Ordinance 3-16, unless an alternate transfer station is designated by the Board of Selectmen.

The following shall be received for recycling at the Transfer Station and at curbside collection, if indicated: (some items may be subject to a fee):

- 1) Newspapers, magazines, junk mail, telephone books, books, glossy paper, mixed paper, or any item made from a paper fiber derivate (curbside collection also);
- 2) Corrugated cardboard (curbside collection also);
- 3) White, green and brown glass (no caps) (curbside collection also);
- 4) Aluminum and tin containers (curbside collection also);
- 5) #1 - #7 HDPE and PET plastic containers (curbside collection also);
- 6) 'White goods' subject to a fee set by the Board of Selectmen;
- 7) Demolition or construction debris from building and roadway projects or locations;
- 8) Waste oil;
- 9) Scrap metal; and
- 10) Any item designated by the Board of Selectmen.
- 11) A swap table (or designated area) as determined by the Selectmen shall be available under the supervision of the vendor managing the Transfer/Recycling Facility.

- C) There shall be a designated area for leaf and yard waste, subject to a fee set by order of the Board of Selectmen
- D) Brush not exceeding 4" in diameter, subject to a fee set by order of the Board of Selectmen.
- E) Operating hours for the Transfer Station will be set by order of the Board of Selectmen and posted.
- F) The Board of Selectmen may modify this list as needed.
- G) The Board of Selectmen shall set fees for the items listed above and any other items that it may designate in the future.

### **Section VIII: Exempted Waste**

The following categories of waste shall be exempted from regulation by the Ordinance:

- 1) Materials from manufacturing, processing or packaging operations which are segregated from solid waste and salvaged for alternate use or reuse by the generator or sold to third parties.
- 2) Glass, metal or other noncombustible materials which are separated from Acceptable Waste by the generator as part of a recycling program.
- 3) Cardboard, paper or other combustible materials which are separated from Acceptable Waste by the generator as part of a recycling program.

## **Section IX: Administration**

This Ordinance shall be administered by the Municipal Officers. Their powers and duties are as follows:

- 1) To adopt reasonable rules and regulations as needed to enforce this Ordinance.
- 2) To consider all license applications pursuant to Section X of this Ordinance and to grant or deny each application within thirty (30) days after receipt of a completed application at the Municipal Offices or within such other time, as the Municipal Officers and the applicant shall agree is reasonable.
- 3) To review any alleged violation of this ordinance, and to impose appropriate penalties therefore after notice and hearing as required by this ordinance.
- 4) To institute necessary proceedings, either legal or equitable, to enforce this ordinance.
- 5) To approve reasonable fees for waste accepted at the Town's Transfer Station. Said fees to be established by the Town's designated vendor responsible for operating the Transfer Station based on the cost of staffing the facility, storing, handling, transporting and disposal of the waste. (ADDED 11-21-1989)

## **Section X: Licensing**

- 1) No person, firm or corporation shall accumulate, collect, store, transport or dispose of Acceptable Waste or Unacceptable Waste generated within the Municipality without obtaining a license from the Municipal Officers, except that a person, firm or corporation that accumulates, collects, stores, transports or disposes of less than 8 tons per month of its own waste shall not be required by this section to obtain such a license.
- 2) Any person, firm or corporation required by this ordinance to obtain a license shall make application to the Municipal Officers, providing the information required. Each

initial application shall be accompanied by an annual, non-refundable application fee as set by the Board of Selectmen's fee schedule.

**3)** The application shall contain all information required by Municipal Officers, including but not limited to a description of the activity(ies) engaged in, e.g., collection, transporting, or disposal of Acceptable and/or Unacceptable Waste; type and amount of waste handled in each service area; description of the facility(ies) operated and used; and equipment inventory, including for vehicles a description - the make, model and year of each vehicle used for the collection or transportation of solid waste. All information provided shall be revised annually upon application for license renewal. If the Municipal Officers determine the application is incomplete, they shall notify the applicant in writing of the specific information necessary to complete it. The Municipal Officers shall be informed immediately in writing of any changes in or additions to equipment, including vehicles.

**4)** An applicant for a license under this section shall demonstrate that it meets the following criteria:

**a)** Financial capacity to perform as proposed in the application.

**b)** Technical capacity (including vehicles and other equipment) to perform as proposed in the application and as required under this ordinance.

**c)** Adequate liability, collision and workers' compensation insurance coverage.

**d)** Safety record (including compliance with state and local motor vehicle laws, ordinances and regulations) so as not to be a danger to public health, safety and welfare.

**5)** Licenses shall not be transferable. In the event of an emergency or vehicle breakdown, a licensee shall be issued a special license for a satisfactory replacement vehicle, upon furnishing of all information required for a licensed vehicle.

**6)** All licenses shall expire one (1) year from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this ordinance.

**7)** The annual license fee for each vehicle licensed or for each applicant licensed for activities not involving the transport of solid waste shall be as set by the Board of Selectmen' fee schedule. License fees shall not be refunded in the event that a license is suspended or revoked. (06-12-2002)

**8)** In the event the Municipal Officers deny a license application, they shall notify the applicant in writing and shall state the reasons for the denial. The applicant may request a public hearing in accordance with the procedures in Section XII.

- 9) Cover and secure all loads for transportation.

### **Section XI: Suspension or Revocation**

Any license issued may be suspended or revoked by order of the Municipal Officers after benefit of a hearing in accordance with the procedures in Section XII, for the following causes:

- 1) Violation of this ordinance.
- 2) Violation of any provision of any state or local law, ordinance, code or regulation, which relates directly to the provisions of this ordinance.
- 3) Violation of any license condition(s).
- 4) Falsehoods, misrepresentations or omissions in the license application.

### **Section XII: Hearings**

- 1) Anyone denied a license pursuant to Section X or whose license is suspended or revoked pursuant to Section XI shall be entitled to a hearing before the Kennebunk Zoning Board of Appeals, if such request is made in writing within ten (10) days of the denial, suspension or revocation.
- 2) Such hearings shall be held within thirty (30) days after receipt of the written request for a hearing.
- 3) The licensee or applicant shall be notified, in writing, as to the time and place of the hearing at least ten (10) days prior to the hearing date. The applicant or licensee has the right to be represented by counsel, to offer evidence and to cross-examine witnesses.
- 4) A determination shall be made by the Zoning Board of Appeals within ten (10) days after the conclusion of the hearing, and notice of the decision shall be served upon the applicant or licensee by registered mail, return receipt requested.
- 5) The Zoning Board of Appeals' final determination relative to the denial or suspension or revocation of a license and the period of suspension or revocation shall take effect as provided in the notice but no later than ten (10) days after the date notice of such final determination has been mailed by registered mail, return receipt requested, to the applicant and shall be conclusive. Notice of the final determination shall set forth the reasons for the denial, suspension or revocation and the effective dates thereof together with a statement that such decision may be appealed as provided in this ordinance.

6) Any controversy or claim arising out of or relating to the Zoning Board of Appeals' determination shall be directly reviewable by Superior Court pursuant to M. R. Civ. P., Rule 80B.

### **Section XIII: Enforcement**

- 1) All provisions of this ordinance are enforceable by duly authorized police officers or the Municipal Officers.
- 2) Any person who violates any provision of this ordinance is subject to arrest and if convicted, to punishment as provided in Section XIV.
- 3) Whenever the Municipal Officers determine that there has been a violation by virtue of noncompliance, they shall give notice of such violation to the person(s) responsible by personal service or by registered mail, return receipt requested.
  - a) The citation shall include a statement of reasons and shall allow reasonable time for performance of any act it requires.
  - b) The citation may contain an outline of remedial action, which, if taken, will effect compliance.
  - c) The citation shall state that unless corrections are made within the allotted time, the violation is subject to prosecution and/or to license revocation or suspension pursuant to the provisions of this ordinance.

### **Section XIV: Penalties**

- 1) **Criminal penalties:** any person who violates this ordinance shall be guilty of a Class E crime for each violation.
- 2) **Civil penalties:** any person, firm or corporation who violates this ordinance shall be subject to a civil penalty, payable to the Municipality, as set by the Board of Selectmen's fee schedule for each violation. Each day of violation shall be considered a separate violation. Such person, firm or corporation shall also be liable for court costs and reasonable attorney fees incurred by the Municipality.

### **Section XV: Conflict and Severability**

- 1) The provisions of this law shall supersede all other local laws, ordinances, resolutions, rules or regulations contrary thereto, or in conflict therewith.
- 2) The provisions of this ordinance shall be severable and if any phrase, clause, sentence or provision, or the application thereof to any person or circumstances shall

be held invalid, the remainder of this ordinance and the application thereof shall not be affected thereby.

#### **Section XVI: Amendment**

This ordinance may be amended in the same manner as any other ordinance of the Municipality, subject to the contractual obligations outlined in the contract between the Municipality and the solid waste facility.

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

#### **Section XVII: Effective Date**

This Ordinance shall become effective on the date of adoption by Town vote. Any person, firm or corporation required to obtain a license hereunder shall have sixty (60) days from the date of adoption of this ordinance to secure such license, which shall become effective on the date specified therein.

#### **Section XVIII: Fees**

Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED 06-23-1987; AMENDED 06-12-2002; 06-09-2004; 06-16-2005; 06-21-2011; 03-24-2015

### **3-15 SOLID WASTE FACILITIES PROHIBITION**

The operation of on site solid waste Disposal Facilities shall be prohibited in the Town of Kennebunk west of the Maine Turnpike.

ADOPTED 03-17-1980

### **3-16 SOLID WASTE DISPOSAL FEES**

The Town of Kennebunk shall establish a fee schedule for the use of the solid waste disposal facility on the Sea Road. Allowable waste shall be designated by the Board of Selectmen.

Fees shall be shown on a fee schedule set by vote of the board of Selectmen each year, after notice and hearing. (06-12-2002)

The Board of Selectmen may, after public notice and hearing, draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or otherwise provided by law, as required by governing contracts and state and federal laws and regulations.

ADOPTED BY SELECTMEN 02-13-1990; AMENDED 06-12-2002; AMENDED 06-21-2011

## **SECTION 3–17 OFFENSES AGAINST PUBLIC PROPERTY, ORDER AND SAFETY**

**17.1** It shall be unlawful for any person:

- a) To intentionally disfigure, deface or remove public buildings, landscaping or other public property including, without limitation, any building, bridge, table, bench, railing, fence, paving, planting (including trees, flowers, lawn or shrubs), landscaping materials, pavers or timbers, waterlines or other public utilities, signs, signal devices, notices or placards (whether temporary or permanent), monuments, stakes, posts, other boundary markers, or other public property such as playground equipment; or
- b) To climb, stand or sit on any public statues, monuments, vases, fountains, railings, fences, walls, signs or other property not designated for such purposes after once having been ordered by a law enforcement officer to cease such activity.

**17.2** It shall be unlawful for any person:

- a) To unreasonably obstruct the free passage of foot or vehicular traffic on any public way, and refuse to cease such activity or remove the obstruction upon the lawful order to do so given by a law enforcement officer;
- b) To refuse the reasonable request of a law enforcement officer to disperse given to six (6) or more persons when the conduct of such persons is likely to result in obstruction of a public way in that such conduct causes or is likely to cause substantial harm, inconvenience, annoyance or alarm to a member of the public; or
- c) To repeatedly engage in conduct in violation of (a) or (b) above in the same or a different location after having been once ordered by a law enforcement officer to cease such activity, remove an obstruction or to disperse.

As used in this ordinance, “public way” means any public street, highway or sidewalk, any private way/public easement laid out or existing under Maine law or under the control of any Town department or official.

**17.3** Any person who violates this ordinance shall be subject to a fine as set by the Board of Selectmen’s fee schedule, in addition to the cost to the Town to repair or, where necessary, to replace any damaged public property:

**17.4** Any person cited for violation of this ordinance who wishes to waive his or her right to contest the matter in court may do so by paying the waiver fee as set by the Board of Selectmen’s fee schedule within 5 business days of receipt of a citation, plus the amount, if any, to repair or replace the damaged public property.

If a person cited for violation of this ordinance is under 18 years of age, the Police Department may not accept the waiver fee unless that person is accompanied by his or her parent or legal guardian.

**17.5** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing.

ADOPTED: June 11, 2003

### **3-18 Use of Permit Fees for Non-Residential Projects**

18.1 When the Code Enforcement Officer determines that a plan review and/or inspection of work performed under a permit for a non-residential project will require a significant amount of time that would remove the Code Enforcement Officer from other duties, the Code Enforcement Officer, with the approval of the Town Manager, may expend up to forty (40) percent of the permit fee received for the project for the purpose of hiring the appropriate professional to conduct the required plan review and/or inspections.

Permit fees may also be utilized for peer review by appropriate professionals of submissions for non-residential projects.

ADOPTED: 06-09-2004

### 3-19 NOISE CONTROL ORDINANCE

#### I. PURPOSE

It is found and declared by the Town of Kennebunk that:

(A) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the Town is a condition which has existed sporadically for some time, and the extent and volume of such noises has been recently increasing; and

(B) The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, safety, welfare and quality of life of the residents of the Town; and

(C) The necessity and the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life of the Town and its inhabitants.

#### II. UNLAWFUL NOISE PROHIBITED

It is unlawful for any person to make, emit, continue, or cause to be made, emitted or continued, any noise beyond the boundaries of that person's property in excess of the noise levels established in this Ordinance. Where multiple residencies exist within the confines of a structure, the limits of one's occupancy rights shall be considered the boundary.

#### III. NOISE LEVEL STANDARDS

Sound or noise from any source within the Town shall not exceed the following equivalent continuous sound level (Leq) limits, to be measured at the lot line of the receiving property and in accordance with Section VII.:

<u>Zone Classification</u>	<u>Daytime Hours</u>	<u>Nighttime Hours</u>
Residential	55 dBA	45 dBA
Commercial	60 dBA	50 dBA
Industrial	70 dBA	60 dBA

#### IV. EXCLUSIONS

The noise levels set forth in Section III do not apply to noise emitted by or related to the following:

A. Natural phenomena.

B. Church bells rung as part of any official church ceremony or service, and tower clock bells ringing the hour during daytime hours, provided that at no time shall such duration exceed thirty (30) minutes.

- C. Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in any emergency situation, provided, however, that burglar alarms not terminating within thirty (30) minutes after being activated shall be unlawful.
- D. Warning devices required by OSHA or other State or Federal safety regulations.
- E. Noise from domestic power equipment such as, but not limited to, power saws, sanders, grinders, lawn and garden tools, lawn mowers, snow blowers, tractors or similar devices operated during daytime hours.
- F. Noise generated by any construction or demolition equipment which is operated during daytime hours, provided that the operation of construction equipment during nighttime hours shall not exceed the maximum noise levels in appropriate zone as specified in Section III. Emergency construction or repair work by public utilities shall also be exempted.
- G. Noise created by refuse and solid waste collection, provided that the activity is conducted during hours provided for in the Town's Solid Waste Ordinance.
- H. Noise created by registered Motor Vehicles on a public way.
- I. Noise created by plows, trucks and other equipment used in the removal of snow.
- J. Noise from any aircraft operated in conformity with, or pursuant to, Federal law, Federal air regulations, and air traffic control instruction, including any aircraft operating under technical difficulties, in any kind of distress, or under emergency orders of air traffic control.
- K. Noise from trains operating in conformity with or pursuant to all applicable State and Federal laws and regulations.
- L. Special events approved by the Board of Selectmen including but not limited to parades, special sporting events, public concerts, and fireworks displays.
- M. Emergency or extraordinary situations
- N. Noise generated from the operations and animals of the Animal Welfare Society facility on the Holland Road.
- O. For good cause shown, after public hearing, the Board of Selectmen has the authority to alter noise levels in specific cases provided four (4) or more members of the Board of Selectmen so vote.

V. ZONING DISTRICT CLASSIFICATIONS

All zoning districts within the Town shall be classified as Residential, Commercial or Industrial. The current zoning districts are classified as set forth below. Any new districts created after the date of this Ordinance shall, at the time of the creation of such zoning district, be classified into one of these three categories.

<u>Zoning District</u>	<u>Use Classification</u>
Resource Protection	Residential
Branch Brook Aquifer	Residential
Rural Conservation	Residential
Rural Residential	Residential

Coastal Residential	Residential
Suburban Residential	Residential
Village Residential (VR and WKVR)	Residential
Downtown Business	Commercial
Upper Square	Commercial
York Street Mixed Use	Commercial
Lower Village Business	Commercial
West Kennebunk Village	Commercial
Suburban Commercial	Commercial
Business Park	Commercial
Industrial	Industrial
39 Portland Rd Contract Zone	Commercial
12 Depot St. Contract Zone	Commercial
One Alfred Road Contract Zone	Commercial
119 Main Street Contract Zone	Commercial
Cousens School Contract Zone	Commercial
Terrace Green Contract Zone	Residential
Webber Hill Road Contract Zone	Commercial
Portland Road Mixed Use Zone	Commercial

VI. DEFINITIONS

The following definitions apply in the interpretation and enforcement of this Ordinance.

- A. Decibel: The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.
- B. Daytime Hours (not Day Light Hours): The hours between 7:00 a.m. and 10:00 p.m., Monday through Saturday, and the hours 9:00 a.m. through 10:00 p.m. on Sunday.
- C. Noise Level: The sound pressure level as measured with a sound level meter using the A-weighting network. The level so read is designated dB(A).
- D. Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- E. Emergency Vehicle: Any motor vehicle authorized by a town, county, state or federal authority to have sound warning devices such as sirens and bells which can lawfully be used when responding to an emergency.
- F. Emergency Work: Work made necessary to restore property to a safe condition following an emergency, or work required to protect persons or property from exposure to imminent danger.
- G. Equivalent continuous sound level (Leq): The measure that accounts for the moment-to-moment-fluctuations in noise levels from all sources during the sampling time period.

- H. Sound Pressure Level: The level of a sound measured in dB units with a sound level meter which has a uniform ("flat") response over the band of frequencies measured.
- I. Motor Vehicle: The term as defined in 29-A M.R.S.A., Section 101 (42), as may be amended from time to time.
- J. Nighttime Hours: All hours other than daytime hours as defined herein.
- K. Person: Any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency, or political or administrative subdivision of the State or other legal entity of any kind.
- L. Premises: Any building, structure, land or portion thereof, including all appurtenances, and shall include yards, lots, courts, inner yards, and real properties without buildings or improvements, owned or controlled by a person.
- M. Sound Level Meter: An instrument for the measurement of sound levels conforming to A.N.S.I. Type I and II Standards.

VII. MEASUREMENT PROCEDURES

For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable:

- (A) All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation.
- (B) Instruments used to determine sound level measurements must conform to the Standards of A.N.S.I. Type I or Type II meters.
- (C) The general steps listed below must be followed when preparing to take sound level measurements:
  - (1) The instrument manufacturer's specific instructions for the preparation and use of the instrument must be followed.
  - (2) The sound level meter must be calibrated before and after each set of measurements. The calibrator itself shall be recalibrated at least once every year.
  - (3) The sound level meter must be placed as specified by the manufacturer's instructions and at least four (4) feet above the surface of the ground. It shall be placed so as not to be interfered with by individuals conducting the measurements.
  - (4) All measurements shall be at the lot line of the receiving property.
  - (5) Measurement period shall be fifteen (15) continuous minutes.

VIII. MANNER OF ENFORCEMENT

This ordinance shall be administered and enforced by the Kennebunk Police Department and/or the Code Enforcement Officer. Residential and commercial violations shall be typically the responsibility of the police department, whereas industrial violations, that of the code enforcement.

IX. VIOLATIONS, PENALTIES AND OTHER REMEDIES

When the noise level standards set forth in Section III are exceeded after being sampled for fifteen (15) continuous minutes, it shall constitute a violation of this Ordinance. For each such violation, the Town shall be entitled to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). Additionally, each violation of this Ordinance shall be deemed to be, and is hereby declared to be, a public nuisance for which the Town is entitled to injunctive relief issued by a court of competent jurisdiction. In any enforcement action, whether for penalties, injunctive relief, or both, the Town shall be entitled to an award of its costs of court, attorneys fees, sound consultant or expert fees, and any other costs incurred in enforcement of this Ordinance. Actions to enforce the provisions of this ordinance shall be brought in the Maine District Court, in accordance with the procedures and requirements established by Rule 80H of the Maine Rules of Civil Procedure.

X. VALIDITY AND SEVERABILITY

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

XI. EFFECTIVE DATE; APPLICABILITY

The effective date of this Ordinance shall be immediately upon passage by Town meeting. Notwithstanding any other ordinance provision to the contrary, this Ordinance shall apply to all existing uses and properties on the date of passage.

Adopted 11-02-2004  
Amended 11-6-2007  
Amended 06-11-2008  
Amended 06-12-2012

**SECTION 4**

**MISCELLANEOUS ORDINANCES**

**4-1 AMATEUR SPORTS**

**Deleted 6/2003**

#### **4-2 CENTENNIAL PLOT**

For the purpose of preserving the Centennial Tree (so-called) the Town of Kennebunk does hereby set aside such portion of Main and Summer Streets as is included in a plan thereof filed with the Town as of the date of passage.

PASSED 09-25-1900

#### **4-3 WIGGIN'S POND REGULATIONS**

It shall be unlawful for any person who has passed his or her fourteenth birthday to fish in Wiggin's Pond. Any non-resident of Maine who is between the ages of twelve and fourteen may only fish in Wiggin's Pond if he or she possesses a non-resident fishing license as required by the state.

Any person who violates the provisions of this section shall, when convicted, be punished by a fine as set by the Board of Selectmen's fee schedule, together with costs for the use of the Town of Kennebunk.

Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 03-1971; AMENDED 06-12-2002; AMENDED 06-21-2011

#### **4-4 PLACING STOCK IN TRADE ON SIDEWALKS**

No person, firm or corporation carrying on any business for the sale of goods, wares or merchandise shall for the purpose of advertising, place any part of their stock in trade upon any town sidewalk adjoining their buildings or upon any shelf, stand or bracket extending over said sidewalk; provided, however that between May 1<sup>st</sup> and October 31<sup>st</sup> of each year for a total aggregate period not to exceed twenty-one (21) days, such a practice may be permitted so long as it does not extend for more than ten (10) consecutive days. A permit from the Town Clerk or designee is required and shall not be issued without a sketch drawing from the applicant indicating ADA compliance for pedestrian passage.

Such permission shall not be granted until the applicant has filed with the Town Clerk a certificate, in a form satisfactory to the Town Attorney, evidencing public liability insurance coverage in an amount not less than four-hundred-thousand dollars (\$400,000), as that number may be amended from time to time, and naming the Town as additional insured. The certificate shall also provide for notice to the Town Clerk not less than thirty (30) days prior to any cancellation of insurance. The licensee shall maintain such insurance at all times while operating its business so as to place stock in trade on sidewalks.

Whoever violates the provisions of this ordinance shall be subject to a penalty as set by the Board of Selectmen's fee schedule, to be recovered upon complaint for the use of said Town.

Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 04-07-1934; AMENDED 06-12-2002; AMENDED 06-21-2011

# FLOODPLAIN MANAGEMENT ORDINANCE

[AMENDED JANUARY 31, 2009]

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## **4-5 FLOODPLAIN MANAGEMENT ORDINANCE**

### **Article 1 – Purpose and Establishment**

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

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

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

The Town of Kennebunk 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, 4401-4407 and Title 38 M.R.S.A., Section 440.

The Town of Kennebunk, Maine elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Kennebunk, Maine.

The areas of special flood hazard, Zones A, A1-A30, AO, V1-30, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Kennebunk, Maine, York County," dated July 19, 1982 with accompanying "Flood Insurance Rate Maps" dated July 15, 1992 and "Flood Boundary and Floodway Map," dated January 19, 1983, are hereby adopted by reference and declared to be a part of this Ordinance.

### **Article II - Permit Required**

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other building permits, which may be required pursuant to the codes and ordinances of the Town of Kennebunk, Maine.

### Article III - Application for Permit

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

- A) The name and address and phone number of the applicant, owner, and contractor;
- B) An address and a map indicating the location of the construction site;
- C) A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
- D) A statement of the intended use of the structure and/or development;
- E) A statement of the cost of the development including all materials and labor;
- F) A statement as to the type of sewage system proposed;
- G) Specification of dimensions of the proposed structure and/or development;

[Items H-K.3 apply only to new construction and substantial improvements]

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

1) base flood at the proposed site of all new or substantially improved structures, which is determined:

a) in Zones A1-30, AO, and V1-30, from data contained in the "Flood Insurance Study - Town of Kennebunk, Maine," as described in Article I; or,

b) in Zone A

(1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K and IX.D.;

(2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,

**(3)** to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.  
**(4)** in coastal zones use the U.S. Army Corps of Engineers' Tidal Flood Profiles New England Coastline, September 1988 to select the 100-year Frequency Tidal Flood appropriate for the development site's location on the profile

**2)** highest and lowest grades at the site adjacent to the walls of the proposed building;

**3)** lowest floor, including basement; and whether or not such structures contain a basement; and,

**4)** level, in the case of non-residential structures only, to which the structure will be flood proofed;

**I)** A description of elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;

**J)** A written certification by a registered land surveyor, registered professional engineer or architect, that the elevations shown on the application are accurate;

**K)** The following certifications as required in Article VI by a registered professional engineer or architect:

**1** a Floodproofing Certificate (FEMA Form 81-65, 01/03, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;

**2** a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;

**3)** a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;

**4)** a certified statement that bridges will meet the standards of Article VI.M.;

**5.** a certified statement that containment walls will meet the standards of Article VI.N.;

**L)** A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

**M)** A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **Article IV - Application Fee and Expert's Fee**

A non-refundable application fee as set by the Board of Selectmen's fee schedule for all minor development and for all new construction or substantial improvements shall be paid to the Town CEO 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 need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the 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 of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

#### **Article V - Review Standards for Flood Hazard Development Permit Application**

The CEO shall:

**A)** Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have, or will be met;

**B)** Utilize, in the review of all Flood Hazard Development Permit applications:

1. the base flood and floodway data contained in the "Flood Insurance Study – Town of Kennebunk, Maine" as described in Article I;

2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and flood data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.

**C)** Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this ordinance.

**D)** In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

**E)** Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;

**F)** If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development permits, based on the type of development:

1. A two part Flood Hazard Development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At the 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 Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect;\_or,

3. A Flood hazard development permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewerage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Application shall be acted upon by the Planning Board as required in Article VII.

**G)** Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and Certification of Design Standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

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

### **A) All development shall:**

- 1)** be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2)** use construction materials that are resistant to flood damage;
- 3)** use construction methods and practices that will minimize flood damage; and,
- 4)** use electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**B) Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

**C) Sanitary Sewer Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.

**D) On-Site Waste Disposal Systems** - On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

**E) Watercourse Carrying Capacity** - All development shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of any watercourse.

**F) Residential** - New construction or substantial improvement of any residential structure located within:

- 1) Zones A1-30, shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
- 2) Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures.
- 3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
  - a) at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b) at least three feet if no depth number is specified.
- 4) Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III, paragraph H.1.b; Article V, paragraph B; or Article IX, paragraph D.
- 5) Zones V1-30 shall meet the requirements of Article VI, paragraph P.

**G) Non-Residential** - New construction or substantial improvement of any nonresidential structure located within:

- 1) Zones A1-30, shall have the lowest floor (including basement) elevated at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
  - a) be flood proofed to at least two feet above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
  - b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c) be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood

Hazard Development Permit, as required by Article III, paragraph K and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

- 2) Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures.
- 3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
  - a) at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b) at least three feet if no depth number is specified; or,
  - c) together with attendant utility and sanitary facilities be flood proofed to meet the elevation requirements of this section and flood proofing standards of Article VI, paragraph G.1.
- 4) Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III, paragraph H.1.b; Article V, paragraph B; or Article IX, paragraph D, or together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
- 5) Zones V1-30 shall meet the requirements of Article VI, paragraph P.

**H) Manufactured Homes** - New or substantially improved manufactured homes located within:

- 1) Zones A1-30, shall:
  - a) be elevated on a permanent foundation such that the lowest floor is at least two feet above the base flood elevation; and,
  - b) be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which will support the manufactured home so that no weight is supported by its wheels and axles, and
  - c) be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to:

1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,

2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

3) all components of the anchoring system described in Article VI, paragraph H.1.b.(1)(2) shall be capable of carrying a force of 4800 pounds.

2) Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures.

3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:

a) at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

b) at least three feet if no depth number is specified; and,

c) meet the anchoring requirements of Article VI, paragraph H.1. (c).

4) Zone A shall:

a) be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and

b) meet the anchoring requirements of Article VI.H.1.c.

5) Zones V1-30 shall meet the requirements of Article VI, paragraph P.

**I) Recreational Vehicles –Recreational Vehicles located within:**

1. Zones A and A1-30 shall either:

a. be on the site for fewer than 180 consecutive days

b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to

the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

2. Zones V1-30 shall meet the requirements of either Article VI.I.1.a. or b., or Article VI.P.

**J. Accessory Structures** – Accessory Structures, as defined in Article XIV, located within Zones A1-30, AO, and A, shall be exempt from the elevations criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

**K) Floodways:**

1) In Zones A1-30 riverine areas encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway is designated on the community's "Flood Insurance Rate Map", unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2) In Zones A1-30 and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3\_ unless a technical evaluation certified by a

registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development;

**a)** will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

**b)** is consistent with the technical criteria contained in Chapter 5 Section 2-7 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).

**3)** In Zone A 1-30 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 flood plain. Encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of Article VI, paragraph I.2.

**L) Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts", or crawlspaces may be enclosed below the base flood elevation requirements provided ALL the following criteria are met or exceeded:

**1)** Enclosed areas are not 'basements' as defined in Article XIV; and,

**2)** Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either:

**a)** be engineered and certified by a registered professional engineer or architect; or,

**b)** meet or exceed the following minimum criteria:

**1)** a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;

**2)** the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,

3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means; and,

3) the enclosed area shall not be used for human habitation; and,

4) the enclosed area is used solely for building access, parking of vehicles, or storage.

**M. Bridges** – New construction or substantial improvements of any bridge in Zones A1-30, AO, A, V1-30 shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

2. a registered professional engineer shall certify that:

a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and

b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

**N) Containment Walls** – New construction or substantial improvement of any containment wall located within:

1. Zones A1-30, A, and V1-30 shall:

a. have the containment wall elevated to at least one foot above the base flood elevation;

b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

2. Zone AO shall have adequate drainage paths around containments walls on slopes, to guide floodwater away from proposed walls.

3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:

a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

b. at least three feet if no depth number is specified; and,

c. shall meet the requirements of Article VI.N.1.b. & c.

**O) Wharves, Piers, and Docks** – new construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30 in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and

2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

**P) Coastal Floodplains:**

1) All new construction located within Zones A1-30, A and V1-30 shall be located landward of the reach of the mean high tide, except as provided in Art. VI.P6.

2) New construction or substantial improvement of any structure located within Zones V1-30 shall:

a) be prohibited unless the following criteria are met:

1) the area is zoned for general development or its equivalent, as defined in the Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S.A. Section 438-A; or,

2) the area is designated as densely developed as defined in 38 M.R.S.A. Section 436-A, sub-3.

b) be elevated on posts or columns such that:

**1)** the bottom line of the lowest structural member of the lowest floor (excluding the pilings or columns) is elevated to two feet above the base flood level;

**2)** the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,

**3)** the wind and water loading values used to meet these criteria shall meet or exceed the design criteria of the 100-year recurrence interval for water and the 50-year recurrence interval for wind.

**c)** have the space below the lowest floor:

**1)** free of obstruction; or,

**2)** constructed with open wood latticework, or insect screening intended to collapse under wind and water without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting piles or columns; or,

**3)** constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

**3)** A registered professional engineer or architect shall:

**a)** develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55/ June 2000); and,

**b)** certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI, paragraph P.2.

**4)** The use of fill for structural support in Zones V1-30 is prohibited.

**5)** Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

6) The areas below the lowest floor shall be used solely for parking vehicles, building access and storage.

7) Conditional Use – Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:

- a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
- b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to two feet above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

## **Article VII – Conditional Use Review**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a conditional use permit is required shall file an application for the permit with the Planning Board.

### **A. Review Procedure for a Conditional use Flood Hazard Development Permit**

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.

2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. the applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

#### B. Expansion of Conditional uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

#### **Article VIII- Certificate of Compliance**

No land in a special flood hazard area shall be occupied or used and no structure, which is constructed or substantially improved, shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

**A)** For new construction or substantial improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer an Elevation Certificate completed by:

- 1) a professional land surveyor, registered professional engineer, or architect for compliance with Article VI, paragraphs F, G, H, or P; and
- 2) a registered professional engineer or architect, in the case of:
  - a) flood proofed non-residential structures, for compliance with Article VI, paragraph G; and,
  - b) construction of structures in the coastal floodplains for compliance with Article VI, paragraph P.2.

**B)** The application for a Certificate of Compliance shall be submitted by the applicant in writing along with a completed Elevation Certificate to the Code Enforcement Officer.

C) The Code Enforcement Officer shall review the application within 10 working days of receipt of the application and shall issue a Certificate of Compliance, provided the building conforms with the provisions of this Ordinance.

## **Article IX - Review of Subdivision and Development Proposals**

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

A) All such proposals are consistent with the need to minimize flood damage.

B) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.

C) Adequate drainage is provided so as to reduce exposure to flood hazards.

D) All proposals include base flood elevation, flood boundaries and, in a riverine floodplain, floodway data. These determinations shall be based upon engineering practices recognized by the Federal Emergency Management Agency (FEMA).

E) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this Ordinance and that 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 statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **Article X - Appeals and Variances**

The Board of Appeals of the Town of Kennebunk, 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 of the provisions of this Ordinance. The Board of Appeals may grant a variance from the requirements of this ordinance consistent with state law and the following criteria:

A) Variances shall not be granted within any designated regulatory floodway if ANY increase in flood levels during the base flood discharge would result.

**B) Variances shall be granted only upon:**

- 1) a showing of good and sufficient cause; and**
- 2) a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and,**
- 3) a showing that the issuance of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,**
- 4) a determination that failure to grant the variance would result in "undue hardship", which in this sub-section means:**
  - a) that the land in question cannot yield a reasonable return unless a variance is granted; and,**
  - b) that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,**
  - c) that the granting of a variance will not alter the essential character of the locality; and,**
  - d) that the hardship is not the result of action taken by the applicant or a prior owner.**

**C) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.**

**D) Variances may be issued by a community for new construction, substantial improvements or other development for the conduct of a functionally dependent use provided that:**

- 1) other criteria of Article X and Article VI K are met; and,**
- 2) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.**

**E) Variances may be issued by a community for the repair, reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, upon determination that:**

1) the development meets the criteria of Article X, paragraphs A. through D. above; and

2) the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

**F) Any applicant who meets the criteria of Article X, paragraphs A through E shall be notified by the Board of Appeals in writing over the signature of the chairman of the Board of Appeals that:**

1) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

2) such construction below the base flood level increases risks to life and property; and,

3) the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

**G) Appeal Procedure for Administrative and Variance Appeals**

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.

2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

3. the Board of appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.

4. The person filing the appeal shall have the burden of proof.

5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.

6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development permit, which includes any conditions to be attached to said permit.

7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **Article XI - Enforcement and Penalties**

**A)** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A, M.R.S.A. Section 4452.

**B)** The penalties contained in Title 30-A, M.R.S.A. Section 4452 shall apply to any violation of this Ordinance.

**C)** 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:

- 1)** the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- 2)** a clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
- 3)** a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- 4)** evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- 5)** a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **Article XII - Validity and Severability**

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

## **Article XIII - Conflict with Other Ordinances**

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

## **Article XIV - Definitions**

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

**'Accessory Structure'** – means a small detached structure that is incidental and subordinate to the principal structure.

**'Adjacent Grade'** - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**'Area of a Shallow Flooding'** - means a designated AO and AH zone on community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**'Area as 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 Article I of this Ordinance.

**'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.

**'Basement'** - means any area of the building having its floor subgrade (below ground level) on all sides.

**'Breakaway Wall'** - means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific

lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**'Building'** - see 'structure'.

**'Certificate of Compliance'** - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**'Coastal High Hazard Area'** - means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30, VE or V.

**'Code Enforcement Officer' (CEO)** – A person certified under Title 30-A, M.R.S.A. Section 4451 (including exception in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

**'Conditional Use'** – means a use that because of its potential impact on surrounding areas and structures is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**'Containment Wall'** – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

**'Development'** - means any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials;

**'Elevated Building'** - means a non-basement building that is:

a. built, in the case of a building in Zones A1-30, A, AO, to have the top of the elevated floor, or in the case of a building in Zones V1-30, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or 'stilts'; and

b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to two feet above the magnitude of the base flood. In the case of Zones A1-30, A, AO, **'elevated building'** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L..

In the case of Zones V1-30, **'elevated building'** also includes a building otherwise meeting the definition of 'elevated building'; even though the lower

area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI, paragraph P.2.b.(3).

**'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 as a condition for purchasing flood insurance.

**'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

b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

**'Flood Elevation Study'** - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**'Flood Insurance Rate Map' (FIRM)** - means an official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

**'Flood Insurance Study'** - see Flood Elevation Study.

**'Floodplain' or 'Flood-prone Area'** - means any land area susceptible to being inundated by water from any source (see definition of 'flooding').

**'Floodplain Management'** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**'Floodplain Management Regulations'** - 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 provides standards for the purpose of flood damage prevention and reduction.

**'Flood proofing'** - 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 their contents.

**'Floodway'** - see Regulatory Floodway.

**'Floodway Encroachment Lines'** - mean the lines marking the limits of floodways on federal, state and local floodplain maps.

**'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.

**'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.

**'Historic Structure'** - means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1) By an approved state program as determined by the Secretary of the Interior, or

2) Directly by the Secretary of the Interior in states without approved programs.

**'Locally Established Datum'** - 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) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**'Lowest Floor'** - 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 in Article VI paragraph L of this Ordinance.

**'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.

**'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.

**'Mean Sea Level'** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**'Minor Development'** – means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**'National Geodetic Vertical Datum' (NGVD)**- the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

**'New Construction'** - means structures for which the 'start of construction' commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structure.

**'North American Vertical Datum' (NAVD)** – means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**'100-year Flood'** - see 'Base Flood'.

**'Recreational Vehicle'** – 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.

**'Regulatory Floodway'** – means

- a) the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b) when not designated on the community's Flood Insurance Rate Map or Flood Boundary and Floodway Map, is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**'Riverine'** - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**'Special Flood Hazard Area'** – see Area of Special Flood Hazard

**'Start of Construction'** - 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, whether or not that alteration affects the external dimensions of the building.

**'Structure'** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above the ground is also a structure.

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

**'Substantial Improvement'** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

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

**'Variance'** - means a grant of relief by a community from the terms of a floodplain management regulation.

**'Violation'** - means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.

## **Article XV - Abrogation**

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

ADOPTED 01-20-1993; AMENDED 06-12-2002; AMENDED 6-14-2006;  
AMENDED 01-31-09; AMENDED 06-12-2012

## **4-6 STREET ADDRESS ORDINANCE**

### **4-6.1 Purpose**

The purpose of this ordinance is to enhance the easy and rapid location of properties for the delivery of public safety and emergency services, postal delivery and business delivery.

### **4-6.2 Authority**

This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A., Section 3001.

### **4-6.3 Administration**

This ordinance shall be administered by the Board of Selectmen or their designee, who shall assign road names and numbers to all properties, both on existing and proposed public and private roads, in accordance with the Maine Enhanced 9-1-1 (E-911) Address Guidebook for Local Governments, the applicable E-911 manuals and recommendations by the Town E-911 committee. The Board of Selectmen or their designee shall be responsible for maintaining the following official records of this ordinance:

- a. A Town of Kennebunk map for official use showing road names and numbers.
- b. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- c. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

### **4-6.4 Naming System**

All roads in the Town of Kennebunk that serve two or more addresses shall be named regardless of whether the ownership is public or private. A road name assigned by the Town shall not constitute or imply acceptance of the road as a public way. The following criteria shall govern the naming system:

- a. Similar names - no two roads shall be given the same or similar -sounding (e.g. Beech and Peach, Pine Road and Pine Lane) names.
- b. Each road should have the same name throughout its entire length.

#### **4-6.5 Numbering System**

Numbers shall be assigned every 50 (fifty) feet in residential districts and every 25 (twenty-five) feet in commercial districts along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by the number origin. The following criteria shall govern the numbering system:

- a.** All number origins shall begin from the designated center of the Town of Kennebunk or that end of the road closest to the designated center. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b.** The number assigned to each structure shall be that of the numbered interval falling closest to the front door or driveway of said structure.
- c.** Every structure with more than one principal use or occupancy shall have a separate number for each use or occupancy. (i.e. duplexes will have two separate numbers; apartments will have one road number with an apartment number, such as 235 Maple Street, Apt 2)

#### **4-6.6 Compliance**

All owners of structures shall, on or before the effective date of this ordinance, display and maintain in a conspicuous place on said structure, the assigned numbers in accordance with the Maine Enhanced 9-1-1 (E-911) Address Guidebook for Local Governments, the applicable E-911 manuals and recommendations by the Town E-911 committee in the following manner:

- a.** Number on the Structure or Residence. Where the residence or structure is within 50 (fifty) feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the front door or entry.
- b.** Number at the Street Line. Where the residence or structure is over 50 (fifty) feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, mail box, or on some structure at the property line adjacent to the walk or access drive to the residence or structure.
- c.** Size and Color of Number. Numbers shall be of a color that contrasts with their background color and shall be a minimum of (4) inches in height. Numbers shall be located to be visible from the roadway at all times of year. (03-25-2008)
- d.** Every person whose duty is to display the assigned number shall remove any different number, which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.

e. Interior location: All residents and other occupants are requested to post the assigned number and road name adjacent to their telephone for emergency reference.

Any property owner wishing to protest the Town's numbering or naming systems or addressing requirements set forth in this ordinance may appeal to the Board of Selectmen.

#### **4-6.7 New Developments and Subdivisions**

All new developments and subdivisions shall be named and numbered in accordance with the provisions of this ordinance and as follows:

a. New Developments. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to procure an assigned number from the Town Assessor. This shall be done at the time of the issuance of the building permit.

b. New Subdivisions. Any prospective sub-divider shall show a proposed road name and lot numbering system on the pre-application submission to the Planning Board. Approval by the Planning Board shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan, lines or dots, in the center of the streets at the appropriate intervals, so as to aid in assignment of numbers to structures subsequently constructed.

#### **4-6.8 Effective Date**

This ordinance shall become effective as of the date of approval. It shall be the duty of the Town of Kennebunk to notify by mail each owner and the Post Office of the new address within thirty days. It shall be the duty of each property owner to comply with this ordinance within 30 (thirty) days of notification. On new structures, numbering will be installed prior to final inspection, if required by local ordinance, or when the structure is first used or occupied, whichever comes first.

ADOPTED 06-12-1996; AMENDED 06-21-2011

## **4-7 PROPERTY TAX ASSISTANCE ORDINANCE**

### **4-7.1 Purpose**

The purpose of this Ordinance is to establish a program (the “Program”) to provide property tax assistance to persons 62 years of age and over who reside in the Town of Kennebunk. Under this Program, the Town of Kennebunk will provide supplemental tax credit to those individuals who qualify as Kennebunk resident beneficiaries of the State of Maine Residents Property Tax Program pursuant to 36 M.R.S.A. 5219-KK of the Maine Revised Statutes and who meet the criteria established by this Ordinance.

### **4-7.2 Definitions**

**Homestead:** A homestead is a dwelling owned or rented by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be occupied by that person and that person’s dependents as a home.

**Income:** Is the previous year’s U.S. form 1040 tax return “adjusted gross income”.

**Owners of Record:** Shall be as of April 1 preceding the July 1 deadline application.

**Qualifying applicant:** A qualifying applicant is a person who is determined by the Town Manager or designee, after review of a complete application under Section 4 of this Ordinance, to be eligible for a property tax credit payment under the terms of this Ordinance.

### **4-7.3 Criteria for Participation**

In order to participate in the Program, an applicant shall demonstrate all of the following:

- a. The applicant shall be 62 years of age or more at the time of application.
- b. The applicant shall have a homestead in the Town of Kennebunk at the time of the application and for the entire year prior to the date of application.
- c. The applicant has received a refund under the provisions of 36 M.R.S.A. 5219-KK State (“Property Tax Fairness Credit”).
- e. The applicant shall have applied for the Maine Homestead Exemption.

### **4-7.4 Application and Payment Procedures**

Any person seeking to participate in the Program shall submit a written request to the Town Manager no later than July 1<sup>st</sup>. Applications are required every year to participate in this Program. The Town Manager or designee shall provide an application form for the Program, which shall include, at a minimum, the applicant's name, homestead address and contact information. Attached to all applications shall be proof and dollar amount (copy of check) of State Refund under 36 M.R.S.A. 5219-KK State ("Property Tax Fairness Credit"). The Town Manager or designee shall review and determine if the application is complete and accurate, and if the applicant is otherwise eligible to participate in the Program. The Town Manager or designee shall notify an applicant if an application is determined to be incomplete and identify any missing information. The Town Manager's or designee's decision on eligibility to participate in the Program shall be final.

#### **4-7.5 Determination of Eligibility and Amount of Assistance**

If the Town Manager or designee determines that the applicant is eligible to participate in the Program, he shall determine the total amount of such assistance to be provided. Eligibility shall be the lesser of the following amounts:

- a. 25% of the amount of the refund awarded by the State to the applicant under 36 M.R.S.A. 5219-KK State ("Property Tax Fairness Credit") or;
- b. \$ 300.00; or
- c. A prorated amount of the available monies in the Program fund established under Section 6 of this Ordinance. If funds are not available in the Program fund to fully fund eligible applications under subsection a or b above, the Town Manager or designee shall reduce payments in accordance with Section 6 of this Ordinance.

Under no circumstances shall the refund from the Maine State's "Property Tax Fairness Credit" combined with the Town's assistance under this ordinance exceed the taxes for the property.

The Town Manager or designee shall report to the Board of Selectmen at its first meeting after September 30<sup>th</sup> each year the projected payments and number of eligible applicants requesting assistance for the Program fund.

#### **4-7.6 Program Fund – Limitations Upon Payments**

Payments under the Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund the year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants under this Ordinance, payments shall be limited to the amounts available in the Fund and applied proportionately. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.

#### **4-7.7 Creation of the Program Fund**

The Program Fund from which payments shall be made under the terms of this Ordinance shall be created as follows:

As funds are available, the Board of Selectmen shall request the annual town meeting to appropriate monies from the general fund or other sources to support this Program. Any surplus monies available after all payments have been made shall remain in the dedicated account hereby established for this Program and shall not lapse into the Town's undesignated fund balance.

#### **4-7.8 Timing of Payments**

A person who qualifies for payment under this Program shall have the full amount (or pro-rated amount if inadequate funds are available) applied to the tax bill no later than the October payment for the year in which participation is sought.

#### **4-7-9 Limitations upon payments**

Only one qualifying applicant per household shall be entitled to payment under the Program each year. The right to file an application under this Ordinance is personal to the applicant and does not survive the applicant's death, but the right may be exercised on behalf of an applicant by the applicant's legal guardian or attorney in fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Town Manager or designee shall be disbursed to another member of the household as determined by the Town Manager or designee. If the applicant was the only member of a household, then no payment shall be made under this Ordinance.

#### **4-7-10 Amendments**

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

ADOPTED 06-13-2007  
AMENDED 06-11-2008  
AMENDED 06-21-2011  
AMENDED 06-12-2012  
AMENDED 06-14-2016

## **4-8 TREE ORDINANCE**

### **4-8.1 Preamble**

This Tree Ordinance has been created by the Kennebunk tree Committee. The Tree Committee views our trees as an important resource to be protected, preserved, maintained and replaced. The purpose of this Committee shall be to recommend policy and plans to the Town with regards to the planting, care and removal of municipal trees while encouraging sound environmental and cultural practices.

The goals of the Tree Committee include:

- Maintain an inventory of Town trees along streets, walkways and public parks (a special tag will be used to identify trees that are monitored for health and safety)
- Publicize and educate in school and the community on tree quality, diversity and care
- Recommend replacement trees, respecting species variety, location and compatibility
- Interact with Tree Warden concerning public and private issues

### **4-8.2 Authorization**

This Tree Ordinance has been created by the Tree Committee and is subject to change.

### **4-8.3 Tree Planting**

The Town of Kennebunk is committed to planting new trees in areas deemed to be in the best interest of the Town. The Tree Committee and Tree Warden are authorized to determine the location, size and species of trees to be planted and may depend on the advice and input from private property owners and the Town's consulting arborist.

Tree planting within any Town right of way or on Town-owned property shall require the approval of the Town Manager or designee and input from the Public Works Director and the Tree Committee.

Tree planting on private property with public funding shall require a Tree Easement Deed. The Tree Easement Deed form is available as Appendix A in the Town Clerk's Office.

#### **4-8.4 Tree Maintenance**

The Town of Kennebunk is committed to maintaining public shade trees listed on the Town's inventory of shade trees. Thorough consideration will be given to the request for service/maintenance of any tree. All evaluations will include the tree species, condition, location, value, life expectancy and other considerations. Tree maintenance will be performed in the following manner:

A. The following steps will be taken when a tree maintenance request is received from the Tree Committee, Tree Warden, Town Manager or designee, or other municipal official:

1. The Tree Committee and the Tree Warden shall evaluate the request and decide the course of action needed.
2. When on Town-owned property or within a town right-of-way, such work shall require the approval of the Town Manager or designee and input from the Public Works Director.
3. When on private property with a tree maintenance easement, granted to the Town, such work shall require the approval of the Town Manager or designee and input from the Tree Committee and Public Works Director.
4. When on private property without a tree maintenance easement, the town will only maintain that portion of the tree that poses a public threat meaning potential damage to any person or property while on Town owned property or in a Town right-of-way. A twelve foot minimum clearance shall be maintained by the Town over all sidewalk and/or rights-of-way. Maintenance will require permission from the private property owner. If the private property owner refuses to grant such permission, the Town will notify the property owner that the maintenance must be performed at the private property owner's expense. With regards to public safety, if maintenance is not performed in a reasonable length of time after such notice, the Town will take action so as to force action or liability upon the private property owner to the extent provided by law.
5. The Tree committee or their designee may ask the private property owner to contribute to the cost of work to be performed.

B. The following steps will be taken when a tree maintenance request is received from a private property owner:

1. The Tree Committee and the Tree Warden shall evaluate the request and decide the course of action, in addition to the evaluation of the tree condition. The evaluation shall include a determination of whether the tree is located on public or private property and whether there is a tree easement deed.
2. When on private property with a tree maintenance easement granted to the Town, such work shall require the approval of the Town Manager or designee and input from the property owner, Public Works Director, and Tree Committee.
3. When on private property, the Town will only require maintenance of that portion of the tree that poses a public threat, meaning potential damage to any person or property while on Town owned property or in a Town right of way. The Town will notify the property owner that the maintenance must be performed at the private property owner's expense. If maintenance is not performed in a reasonable length of time after such notice, the Town will take action so as to force action or liability upon the private property owner to the extent provided by law.
4. The private property owner may request the Town of Kennebunk to share in the cost of said maintenance work under special circumstances as deemed worthy by the Town Manager or designee.

#### **4-8.5 Tree Removal**

The Town of Kennebunk is committed to maintaining public shade trees listed on the Town's inventory of shade trees. Thorough consideration will be given to the request for removal of any tree. All evaluations will include the tree species, condition, location, value, life expectancy and other considerations. Tree maintenance will be performed in the following manner:

- A. The following steps will be taken when a tree removal request is received from the Tree Committee, Tree Warden, Town Manager or designee, or other municipal official:
  1. The Tree Committee and the Tree Warden shall evaluate the request and decide the course of action. In addition to the evaluation of the tree condition, the evaluation shall include a determination of whether the tree is located on public or private property and whether there is a tree easement deed.
  2. When on Town-owned property or within a Town right-of-way, such work shall require the approval of the Town Manager or designee and input from the Public Works Director, and Tree Committee.

3. When on private property with a tree maintenance easement granted to the Town, such work shall require the approval of the Town Manager or designee and input from the property owner, Public Works Director, and Tree Committee.
4. When on private property without a tree maintenance easement, the Town will only maintain that portion of the tree that poses a public threat meaning potential damage to any person or property while on Town owned property or in a Town right-of-way. Maintenance will require permission from the private property owner. If the private property owner refuses to grant such permission, the Town will notify the property owner that the maintenance must be performed at the private property owner's expense. With regards to public safety, if maintenance is not performed in a reasonable length of time after such notice, the Town will take action so as to force action or liability upon the private property owner to the extent provided by law.
5. The Tree Committee or their designee may ask the private property owner to contribute to the cost of work to be performed.
6. Cutting of trees, limbs, etc. in a Town right-of-way or on any Town-owned land by residents or non-residents whether trees are living, non-living, diseased, standing or fallen without consent (verbal or written) by the Town Manager or designee, Public Works Director, or Tree Warden is strictly forbidden.

B. The following steps will be taken when a tree removal request is received from a private property owner:

1. The Tree Committee and the Tree Warden shall evaluate the request and decide the course of action, in addition to the evaluation of the tree condition, the evaluation shall include a determination of whether the tree is located on public or private property and whether there is a tree easement deed.
2. When on private property with a tree maintenance easement granted to the Town, such work shall require the approval of the Town Manager or designee and input from the property owner, Public Works Director, and Tree Committee.
3. When on private property without a tree maintenance easement, the Town will only maintain that portion of the tree that poses a public threat meaning potential damage to any person or property while on Town-owned property in a Town right-of-way. Maintenance will require permission from the private property owner. If the private property owner refuses to grant such

permission, the Town will notify the property owner that the maintenance must be performed at the private property owner's expense. With regard to public safety, if maintenance is not performed in a reasonable length of time after such notice, the Town will take action so as to force action or liability upon the private property owner to the extent provided by law.

4. The Tree Committee or their designee may ask the private property owner to contribute to the cost of work to be performed.

#### **4-8.6 Legacy Trees**

1. The Tree Committee and the Tree Warden recognize the importance to the Town of Legacy Trees and other trees of historic importance. Legacy trees shall be defined as trees of significant historical value, dimension and/or species. When said trees are located on private property, the Tree Committee will work to the best of its ability with the private property owner to recognize and maintain said trees in the best interest of both the private property owner and the Town. The final determination of whether a tree meets the definition of a Legacy tree shall be solely determined by the Tree Committee and/or Tree Warden
2. The Tree Committee encourages private property owners to respect and protect recognized Legacy Trees. To the end, the Tree Committee encourages the property owner to grant a tree easement to the Town for said Legacy Tree so that it may be preserved for future generations.

#### **4-8.7 Record Keeping**

All requests for service and activity shall be recorded and include the following information:

- Tree identification number if available
- Street address location
- Tax map and lot
- Current property owner
- Requested service
- Evaluation by Tree Warden
- Action taken

ADOPTED 06-10-2009  
AMENDED 06-21-2011

## **4-9 SINGLE USE PLASTIC CARRY OUT BAG ORDINANCE**

### **4-9.1 Purpose and Intent**

The production and use of single-use plastic carry-out bags have significant impacts on the marine and land environment of all coastal communities that outweigh their usefulness to the public. These impacts include, but are not limited to: contributing to the potential death of marine animals through ingestion and entanglement; contributing to pollution of the land and marine environment; imposing an unnecessary burden on our solid waste management; clogging our storm water drainage systems; and requiring the use of non-renewable fossil fuels for manufacture.

Voluntary efforts to control the use of single-use plastic carry out bags have had minimal effect to date.

The Town of Kennebunk strives to conserve resources; reduce greenhouse gas emissions, waste and litter; and to protect the quality of life for the Town's residents and visitors.

The purpose of this ordinance is to eliminate the usage of single-use carry out plastic bags by all Retail Establishments in the Town of Kennebunk.

### **4-9.2 Authority**

This Ordinance is adopted pursuant to the Town's Home Rule Authority granted under Art VIII, Pt. 2, Sec 1 of the Maine Constitution and Title 30-A M.R.S. §3001 of the general laws of Maine.

### **4-9.3 Definitions**

Customer: Any person obtaining food or merchandise at or from a Retail Establishment.

Food: Any nutritious substance that is intended for eating and drinking either in its original form or that is prepared in any manner for the same; however, food does not include produce, meat, lobsters, fish or bulk foods to the extent those products are contained within handle-less plastic bags solely used for protection of the food or for containing potential contamination of those foods or other foods in contact therewith.

Merchandise: Goods or articles that are bought and sold between a retailer and a customer for use or consumption. Merchandise does not include dry cleaning, newspapers or wet items to the extent those items are contained within handle-less plastic bags solely used for protection of the items contained therein.

Recyclable Paper Bag: Paper bags that are accepted for recycling by the Town of Kennebunk's curbside recycling program.

Retail Establishment: Any commercial enterprise engaged in the sale of food or merchandise including, but not limited to, grocery and convenience stores, markets, pharmacies, restaurants, take-out food purveyors, seasonal and temporary businesses and other merchandise retailers. Nonprofit and religious organizations are not considered Retail Establishments.

Reusable Bag: A bag with handles that is specifically designed and manufactured to withstand repeated uses over a period of time, is made from a material that can be cleaned and disinfected regularly and is at least 3 mils thick if made from plastic.

Single-Use Plastic Carry Out Bag: Plastic bag with a thickness of less than 3 mils (3/1000 of an inch) with an integral handle provided at check-out for the purpose of transporting food or merchandise out of the Retail Establishment.

#### **4-9.4 Standards**

Every Retail Establishment located in the Town of Kennebunk shall comply with this Ordinance.

- A) No Single-Use Plastic Carry-Out Bag shall be distributed, either with or without charge, to a Customer, at any Retail Establishment located in the Town of Kennebunk.
- B) Customers are encouraged to bring their own Reusable Bags to Retail Establishments, which may choose to give customers a rebate, discount or other incentive for such.
- C) Retail Establishments may provide Customers with Recyclable Paper Bags or Reusable Bags, with or without a charge, as the Retail Establishments so desire.

#### **4-9.5 Exceptions**

- A) Single use plastic bags, without handles, used to contain dry cleaning, newspapers, wet items, and to protect produce, meat, seafood and other bulk foods from damage or contaminating other items are permissible.
- B) Nonprofit organizations or religious institutions are exempt from the provisions of this Ordinance.

#### **4-9.6 Administration and Enforcement**

- A) The Town Manager or his designee shall have the authority to administer and enforce this Ordinance.
- B) If it is determined that a violation has occurred, the Town Manager or his designee shall issue a written warning to the Retail Establishment for the initial violation. If an

additional violation occurs after a written warning has been issued, the Town Manager or his designee shall issue a written notice of violation (“NOV”) and shall impose a penalty against the Retail Establishment. The penalty associated with each written notice of violation shall be established by the Board of Selectmen annually and set forth in the Board’s Fine Schedule, available in the Town Clerk’s office and on the Town’s electronic web site.

- C) No more than one penalty shall be imposed upon a Retail Establishment within a 7-day period.
- D) A Retail Establishment shall have 15 days following receipt of a written notice of violation to pay the penalty.

#### **4-9.7 Appeals**

Any decision, action, or inaction pertaining to this ordinance may be appealed to the Maine Superior Court ( York Cty). Any appeal must be filed within 30 days of the date of the written warning or NOV issued.

#### **4-9.8 Effective Date**

This Ordinance shall take effect four (4) months following the date of adoption by the voters to allow Retail Establishments time to make necessary adjustments to bring operations into compliance with the law.

#### **4-9.9 Severability**

Should any portion of this Ordinance be held invalid by a court of competent jurisdiction, this shall not affect the validity of remaining portions of this Ordinance.

#### **4-9.10 Amendments**

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

ADOPTED 06-14-2016

**SECTION 5**

**THE ORDINANCE RELATING TO GENERAL ASSISTANCE  
IS FILED UNDER SEPARATE COVER**

**SECTION 6**

**ORDINANCES RELATING TO LICENSING**

## 6-1 STREET VENDORS AND PEDDLERS

### 6-1.1: Definitions

1. “*Eating Establishment*” as used herein shall include any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments, or establishments preparing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, take-out restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, industrial feeding establishments, retail frozen dairy product establishments, airports, parks, theaters, recreational camps, youth camps or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for sale other than in original sealed packages.
2. “*Mobile Vending Unit*” as used herein shall mean a mobile vehicle, cart or stand designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.
3. “*Non-profit Street Vendor*” as used herein shall mean a Street Vendor who operates solely on behalf of bonafide charitable, service, religious, municipal organizations or agencies, or youth sports or similar school booster groups or agencies located within Kennebunk, as well as any person, firm, corporation, association, club, partnership or society operating as part of or associated with an event sponsored by the Town of Kennebunk such as the Kennebunk Farmers’ Market.
4. “*Peddler*” as used herein shall include any person, having no established or fixed place of business in Kennebunk, selling or offering for sale tangible commodities other than food products from any public street, other publicly owned or controlled space within Kennebunk, and where delivery is made at the time of sale.
5. “*Person*” as used herein shall include the singular and the plural, and shall also mean and include any person, firm or corporation, association, club, partnership or society.
6. “*Resident*” as used herein shall mean a person whose domicile is in Kennebunk, Maine.
7. “*Street Vendor*” as used herein shall mean a seller of any foods or non-alcoholic beverages for immediate consumption from a cart, stand, display or vehicle stationed at a specified and approved location on a public street, sidewalk or public place. Such location shall be established and approved as provided by this Section.
8. “*Town*” as used herein shall mean Kennebunk, Maine.

9. “*Victualer*” as used herein shall mean a person who serves food or drink prepared for consumption on the premises by the public, either as a Street Vendor or at an Eating Establishment.
10. “*Waterhouse Center Zone*” as used herein shall include all privately owned property, public streets, sidewalks, parking lots and other publicly owned or controlled spaces within 300 feet from any property line of 51 Main Street, the Waterhouse Center Pavilion property.

### **6-1.2: License Required**

It shall be unlawful for any person to engage in the business of Peddler or Street Vendor as defined in Section 6-2.1 of this Ordinance within the corporate limits of Kennebunk without first obtaining a license therefor from the Town Clerk, Town Manager or other designee appointed by the Municipal Officers as provided herein. Street Vendors licenses shall be issued for the sale of food items only, and those food items shall be primarily intended to be consumed at the time of purchase. Any distribution of free product samples shall be limited to samples of food for sale at that cart. Peddlers’ licenses shall be issued for the sale of all other tangible goods.

The requirements of this Ordinance shall not apply to participation by a Street Vendor or Peddler in any Town-sponsored event including, but not limited to, the “Harvest Fest,” “Winter Fest,” “May Day,” and “Old Home Week.” Participation by Street Vendors and Peddlers in Town-sponsored events shall be reviewed and approved annually by a committee appointed by the Board of Selectmen. The requirements of this Ordinance shall also not apply to participation in the Kennebunk Farmers’ Market or the Kennebunk Downtown Artisans’ and Crafters’ Market; provided, however that a Street Vendor or Peddler licensed to operate pursuant to this Ordinance shall not be precluded by these events.

### **6-1.3: Application Requirements and Licensing Procedures**

1. Applications for licenses under this Ordinance must be made by the Street Vendor or Peddler each calendar year in which the Street Vendor or Peddler desires to operate. Applications for Street Vendor’s and Peddler’s licenses in the Waterhouse Center Zone must be submitted on or before January 31 of each calendar year, or as otherwise required and duly noticed by the Board of Selectmen for the license year immediately following the adoption of this Ordinance. The applicant shall file with the Town Clerk a sworn or affirmed application in writing on a form to be furnished by the Town Clerk, which shall require the following information:

- a. Name of the applicant including company, corporation, d/b/a, and the name of all persons associated with or who will be conducting business with the applicant pursuant to the license;
- b. Address of the applicant and any related business entities. There must be a local and legal address for receipt of notices. In the event of change of either address, the applicant is obligated to notify the Town Clerk immediately;
- c. A brief description of the types of goods or food and/or beverages to be sold by the applicant;
- d. Evidence of current licenses and registrations held by the applicant as may be required by the State of Maine in connection with applicant's sales;
- e. A description of the proposed location of the applicant's sales. The inclusion of this information on an application shall not be deemed a guarantee of that location and all locations of Street Vendors and Peddlers shall be subject to the approval of the Board of Selectmen;
- f. If a vehicle is to be used in connection with the Street Vendor's or Peddler's sales, a description of the same, together with license number or other means of identification;
- g. A statement as to whether the applicant has been convicted of any crime or violation of any municipal ordinance, including the denial, suspension or revocation of a Street Vendor's or Peddler's license within the last five years and details of the same;
- h. A photograph of any vehicle, Mobile Vending Unit or other display to be used in the operation of the business and a description of materials, measurements, appurtenances, signs, awnings, umbrellas, fuel, refrigeration, water supply and colors associated with the vehicle or display to indicate compliance with the performance standards listed in Section 6-2.7 below. Specific measurements, designs and locations of the vehicle, Mobile Vending Unit and all appurtenances, including detached items, shall be submitted.
- i. A sketch showing the proposed location of a Street Vendor or Peddler other than those located within the Waterhouse Center Zone or as otherwise assigned by the Selectmen, its measurements and all appurtenances, and the relationship of all of the above features to all site features of the immediate area including, but not limited to, sidewalks, driveways, buildings, landscaping, paths, signs and utilities.

- j. Any other information, as may be required by the Town Clerk, Town Manager or other designee appointed by the Municipal Officers, which directly relates to the safe and healthy operation of the licensed Street Vendor or Peddler.
2. A non-refundable application fee in an amount set forth in the fee schedule set by vote of the Municipal Officers shall accompany each application and a license fee in an amount set forth in the fee schedule set by the vote of the Municipal Officers shall be paid to the Town Clerk upon approval of the license.
3. The Town Clerk, Town Manager or other designee appointed by the Municipal Officers shall approve a license as provided in this Ordinance based on review of the application and related materials, unless he or she finds that any or all of the following apply:
  - a. The application was not complete or contains false or misleading information; or
  - b. The application and/or requested license are not fully in compliance with the requirements of this Ordinance or any other applicable laws.
4. After the approval of licenses by the Town Clerk, Town Manager, or other designee, licenses shall be issued subject to the lottery provisions outlined in Section 6-2.4 below, where applicable, and upon submission of the following:
  - a. A copy of the certificate of insurance required by Section 6-2.6.1;
  - b. The location desired by the Street Vendor or Peddler;
  - c. For Street Vendors only, a valid victualer's license. In the event a victualer's license is not approved or renewed by the State of Maine or the Town, then the Street Vendor's license shall not be issued or, if previously issued, shall no longer be valid; and
  - d. For Street Vendors only, a valid license issued by the State of Maine Department of Human Services for food service.
5. Street Vendor and Peddler licenses shall be valid for one year and shall be renewed annually upon application of the license holder, subject to the application and review requirements of Section 6-2.3. The location of Street Vendors and Peddlers shall be assigned and/or approved by the Municipal Officers upon renewal each year and may be subject to a rotation.

6. Any person who has held a Street Vendor or Peddler license under this Ordinance for seven (7) consecutive renewal terms shall not be issued an eighth renewal license, but may apply as a new applicant.

7. Street Vendor and Peddler licenses shall not be subleased or assigned to any party and shall only be valid for use for the location and operations approved by the Town Clerk or Town Manager for that applicant; provided, however, that employees or alternate operators of the applicant's business may conduct the applicant's business in the same location and under the same conditions as approved by the license on behalf of the applicant.

#### **6-1.4: Annual Lottery for Street Vendors in the Waterhouse Center Zone**

1. After the Town Clerk, Town Manager or other designee has approved the license applications for Street Vendors and Peddlers in the Waterhouse Center Zone, the Town Clerk, Town Manager or other designee shall conduct a public lottery to assign Street Vendor and Peddler licenses and locations in the Waterhouse Center Zone no later than the first meeting of the Board of Selectmen in February of each calendar year, or as otherwise scheduled and duly noticed by the Board of Selectmen for the license year immediately following the adoption of this Ordinance. At least 14 days before the lottery, the Town Clerk shall mail written notice of the time and place of the lottery to each approved Street Vendor and Peddler applicant and shall post and publish public notice of the same.

2. The Town shall issue no more than four (4) Street Vendor licenses each year within the Waterhouse Center Zone, but may issue less than four (4) Street Vendor licenses in that zone if the Municipal Officers determine by majority vote when establishing the designated locations pursuant to Section 6-2.5.4 prior to the timeframe specified therein that it is in the best interest of public health and safety. For any year in which Street Vendor licenses are available, the public lottery process as outlined in Section 6-2.4 above shall apply.

3. The Town shall issue a number of Peddler licenses each year within the Waterhouse Center Zone to be determined by majority vote of the Board of Selectmen on or before the first meeting of the Board of Selectmen in February of each year pursuant to the requirements of Section 6-2.5.4 in addition to the consideration of approved Street Vendor locations within the Waterhouse Center Zone.

4. One additional Street Vendor or Peddler license shall be reserved each year for use by Non-profit Street Vendors or Peddlers within the Waterhouse Center Zone. Non-profit Street Vendors or Peddlers may apply to the Town Clerk, Town Manager or other designee on an application form to be provided by the Town Clerk for the use of the designated Non-profit Street Vendor or Peddler space once per calendar year or

more frequently as permitted by majority vote of the Board of Selectmen upon request of the Non-profit Street Vendor or Peddler. All Non-profit Street Vendors and Peddlers using the designated location shall provide the Town Clerk's Office with a report of activities conducted at these locations within 30 days after the event. Failure to comply with this provision may result in forfeiture of the right to use the location again during the calendar year and following.

5. Those approved Street Vendor and Peddler applicants who are present at the lottery in person or by agent acting under written authority may select their own locations from the pre-approved locations provided in the order in which their names are drawn. Approved Street Vendor and Peddler applicants who are not present will be assigned locations at random by the Municipal Officers or its designee.

6. Issued licenses shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the kind of goods to be sold thereunder, the date of issuance, and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The Town Clerk shall keep a permanent record of all licenses issued.

7. In the event that Street Vendor and/or Peddler locations in the Waterhouse Center Zone remain unassigned after the lottery is held, or in the event that assigned Street Vendor and/or Peddler locations are subsequently abandoned or relinquished during the applicable calendar year, the Town Clerk may accept additional applications for Street Vendor and/or Peddler licenses on a first come, first served basis and may forward qualified applications to the Municipal Officers for final action. The Municipal Officers or the Town Clerk shall grant new or renewal licenses to qualified applicants who have satisfied the requirements set forth in Section 6-2.3.

#### **6-1.5: Location**

1. Peddlers and Street Vendors may establish a location on a private lot, or request a location on a publicly owned or controlled space only within the following Districts: Downtown Business District (DB); Lower Village Business District (LVB); Suburban Commercial (SC); Business Park (BP); Industrial District (I); York Street Mixed Residential and Commercial Use District (MRCU); West Kennebunk Village Mixed Use District (WKV); Upper Square (US), Village Residential (VR).
2. Street Vendors shall be prohibited within the Coastal Residential Zoning District and the Resource Protection Zone abutting Beach Ave. and Great Hill Road.
3. An applicant for a Street Vendors or Peddlers license shall specify the location where he or she proposes to locate. All locations shall be subject to the approval of the Town Clerk, Town Manager or other designee appointed by the Municipal Officers.

4. The Municipal Officers shall designate all Street Vendor locations within the Waterhouse Center Zone for each license year no later than February 1 of the license year or at such other time as may be necessary and appropriate by the Board of Selectmen prior to issuing licenses for the license year immediately following the adoption of this Ordinance. Street Vendors shall not be permitted in any location other than those approved by the Municipal Officers for that year. When determining Street Vendor locations, the Municipal Officers shall consider whether the Street Vendor would create a nuisance, blight, safety, or public health hazard; significantly impede or interfere with the free and reasonable movement of motor vehicles, bicyclists, or pedestrians upon Town ways, crosswalks, pathways, or sidewalks; or impair safe sight distances for turning vehicles from such Town ways or sidewalks in and out of private ways and parking areas.
  
5. The Municipal Officers shall have the authority to relocate existing Street Vendor and Peddler locations at any time if the Police Chief determines that they create safety hazards or as determined necessary by the Municipal Officers for Town-sponsored events such as "Harvest Fest," "Winter Fest," "May Day," and "Old Home Week." The Municipal Officers reserve the right to relocate and/or prohibit Street Vendors and Peddlers during any regularly-scheduled, annual Town-sponsored event or other Town-sponsored or private events to be held in the Waterhouse Center Zone when the proposed location would create a nuisance, blight, safety, or public health hazard; significantly impede or interfere with the free and reasonable movement of motor vehicles, bicyclists, or pedestrians upon Town ways, crosswalks, pathways, or sidewalks; or impair safe sight distances for turning vehicles from such Town ways or sidewalks in and out of private ways and parking areas. The Town Clerk shall provide approved Street Vendors and Peddlers with a list of these events and any corresponding blackout dates each year; provided, however, that this list is subject to change.
  
6. Locations of Street Vendors and Peddlers may be denied if:
  - a. The proposed location would create a nuisance, blight, safety, or public health hazard;
  - b. The proposed location would significantly impede or interfere with the free and reasonable movement of motor vehicles, bicyclists, or pedestrians upon Town ways, crosswalks, pathways, or sidewalks, or impair safe sight distances for turning vehicles from such Town ways or sidewalks in and out of private ways and parking areas;
  - c. The proposed location does not meet ADA standards or sidewalk clearance; or

- d. The requested location is within the Historic District and a certificate of appropriateness from the Historic Preservation Committee has not been issued
- e. Applicant shall comply with all local ordinances and restrictions pursuant to the terms of any permit of the Code Enforcement Officer.

7. The Municipal Officers shall have the authority to issue one additional license to a Street Vendor or Peddler that desires to participate in an event sponsored by a non-profit or charitable organization; provided that the Street Vendor or Peddler submit a proposal to the Municipal Officers which designates a portion of the Street Vendor's or Peddler's sales to the organization sponsoring that event. Applications shall be submitted in accordance with this Ordinance; provided, however, that applications may be submitted at any time during the year and the associated fees shall be established by the Municipal Officers as set forth in the fee schedule.

#### **6-1.6: General Provisions**

1. Street Vendors and Peddlers shall maintain in full force and effect at all times a policy of comprehensive public liability insurance with limits of not less than one million dollars (\$1,000,000), naming the Town of Kennebunk as additional named insured. A certificate of insurance must be provided before a Street Vendors or Peddlers license is issued.

2. Street Vendors and Peddlers may operate on publicly owned or controlled property in the Waterhouse Center Zone within the hours of 7:00 am – 10:00 pm Monday – Saturday and 9:00 am – 10:00 pm Sunday, local prevailing time, in conformance with all provisions of the Town's Noise Control Ordinance, Section 3-19. Street Vendors and Peddlers may operate on private property within the Waterhouse Center Zone only after 10:30 pm. Street Vendors and Peddlers in all other approved locations shall not be limited by the hours of operation set forth in this paragraph.

#### **6-1.7: Performance Standards**

- 1. A Street Vendor or Peddler shall not operate in a way that would restrict or interfere with ingress to or egress from any building, abutting parcel or public place or obstruct adequate access by fire, police or sanitation vehicles, and shall not interfere with pedestrian flow on the sidewalk.
- 2. All utilities shall be provided through a service area as designated by the Town, and all connections shall be determined secured and safe by inspection of the Town's designated official. Street Vendors and Peddlers in the Waterhouse Center Zone shall not be permitted to utilize generators unless expressly permitted and approved by the Municipal Officers on the basis that they will not create a noise nuisance.

3. The operations area shall be kept clean and free of litter. Public trash receptacles on the street shall not be used by Street Vendors or Peddlers. All trash shall be disposed of in conformance with the Town's Rubbish Ordinance, Section 3-2.

### **6-1.8: Mobile Vending Units**

1. The design and appearance of all Mobile Vending Units shall conform to the following specifications:
  - a. Materials: Mobile Vending Units may be commercial construction or individually constructed. All carts shall be made of solid, durable materials.
  - b. Color: Neon and fluorescent as predominant colors are prohibited.
  - c. Shape: "Theme" carts or stands, such as one in the shape of hot dogs, are prohibited.
  - d. Size: Maximum dimensions of a Mobile Vending Unit located in certain designated spaces within the Waterhouse Center Zone shall cover no greater than 80 square feet. Maximum height of the Mobile Vending Unit located in certain spaces within the Waterhouse Center Zone as designated by the Municipal Officers shall be ten (10) feet from the top of the Mobile Vending Unit to the bottom of the Mobile Vending Unit where it (or its wheels) touches the ground. No signs, awnings or canopies shall be permitted to protrude from the Mobile Vending Unit in excess of two feet of these dimensions in any direction. All other Mobile Vending Units shall be limited in size only as required for the purposes of public safety pursuant to their approved locations.
2. Awnings and umbrellas shall be free standing without the use of poles, constructed of a non-rigid, flame retardant fabric such as, but not limited to, canvas, rip stop nylon or soft plastic.
3. The hitch shall be visually identified for safety purposes with a wrapper, bicycle type flag or other similar unobtrusive identifying device such as a cone which does not obstruct the clear area and which meets the requirements of the federal Americans with Disabilities Act.
4. Mobile Vending Units are allowed the following signs subject to the following requirements.

- a. No more than two (2) signs, including lettering on an umbrella or awning, are permitted on each Mobile Vending Unit. In addition, one menu board is permitted and shall be no larger than six (6) square feet.
  - b. Each sign shall be secured to the cart and shall not extend in any direction beyond the maximum measurements of the cart as outlined in Section 6-2.7.1(d) above.
  - c. Each sign face shall be counted as one sign.
    - d. Free standing signs are allowed per the sign ordinance (sandwich boards limited to 12 square feet).
    - e. Sign design shall be in accordance with Article 10, Section 7 of the Town's Zoning Ordinance.
  - f. Digital signage shall be prohibited.
5. Mobile Vending Unit lighting shall conform to the following requirements:
  - a. Lighting shall not increase the light level at the perimeter of the operations area by more than 5 foot candles above the ambient light level. However, total maximum lighting at the perimeter of the operations area shall not exceed fifteen (15) foot candles.
  - b. Light sources shall be aimed or shielded so that the light projects downward and in no case shall the angle be less than 20 degrees below horizontal.
6. Items, except for those located on the Mobile Vending Unit, are limited to the following: one trash receptacle and one recycling receptacle. These items shall be located immediately adjacent to or under the Mobile Vending Unit. An unobstructed walkable path around the Mobile Vending Unit and a sufficient area in which customers may safely queue when ordering and waiting for food must be provided.
7. No animals shall be attached to the cart except for guide animals.
8. No amplified sound, such as music, shall be permitted from any Mobile Vending Unit. Street Vendors and Peddlers shall not shout, call out or hail motorists or passersby in a loud voice or by approaching or otherwise hawking goods.
9. The Mobile Vending Unit shall meet all local, state and national fire, safety and health codes.

10. Each Mobile Vending Unit shall display its valid State and local food service, victualer's and Street Vendors licenses in a visible location.

11. Mobile Vending Units located within the Waterhouse Center Zone under the canopy of the Waterhouse Center may be subject to additional regulations as determined necessary and appropriate generally for such units by the Board of Selectmen for the public health and safety including, but not limited to, a prohibition on the use of propane, charcoal or other fuel sources for cooking under the canopy or certain provisions to prevent units from leaking on the floor of the Waterhouse Center.

#### **6-1.9: Revocation of License**

1. Licenses issued under the provisions of this Ordinance may be revoked by the Municipal Officers after notice and hearing for any of the following causes:

- a. Fraud, misrepresentation or false statement contained in the application for license;
- b. Fraud, misrepresentation, or false statement made in the course of carrying on his or her business as a peddler;
- c. Any violation of this Ordinance;
- d. Conviction of any crime or misdemeanor involving moral turpitude; or
- e. Conducting the business of peddling in any unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

2. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at the licensee's legal address at least five (5) days prior to the date set for hearing.

#### **Section 6-1.10: Expiration of License**

All licenses issued under this Ordinance shall expire one year from the date of issuance. Licenses issued in the first year following adoption of this Ordinance shall be valid from the date of issuance through January 31, 2016.

#### **Section 6-1.11: Appeal**

Any person aggrieved by the action of the Town Clerk or Town Manager in the disapproval of an application or location as provided in Section 6-2.3 and 6-2.4 of this Ordinance shall have the right of appeal to the Municipal Officers. Such appeal shall be taken by filing with the Board of Selectmen within fourteen (14) days after notice of the action complained of has been mailed to such person's legal address, a written statement setting forth fully the grounds for the appeal. The Board of Selectmen shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Section 6-2.4 of this Ordinance for notice of hearing on revocation. The decision and order of the Board of Selectmen on such appeal shall be final and conclusive. Any person aggrieved by the action of the Municipal Officers shall have the right to appeal to Superior Court within 30 days of said action.

### **Section 6-1.12: Enforcement & Penalties**

1. This Ordinance shall be enforced by the Town's Code Enforcement Officer or his or her designee.
2. Any person aggrieved by a decision of the Code Enforcement Officer shall have the right to appeal that decision to the Board of Appeals. An appeal must be filed in writing with the CEO within ten (10) days after the "date of issuance" inscribed by the Code Enforcement Officer on a written notice of decision sent to the alleged violator.
3. Any person violating this ordinance shall commit a civil violation, punished by:
  - a. For the first offense, a civil penalty of \$100 per day per occurrence;
  - b. For the second violation, revocation of the license by the Municipal Officers.

### **Section 6-1.13: Amendments**

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

PASSED 03-05-1923; AMENDED 06-12-2002; AMENDED 06-21-2011;  
AMENDED 12-09-2014; AMENDED 06-14-2016

## **6-2 DOOR-TO-DOOR SOLICITATION**

### **Section 6-2.1: Purpose**

The purpose of this Door-to-Door Commercial Solicitation ordinance to Residential Property Dwellers is to secure for the residents of the Town the peaceful enjoyment of their homes and property by prohibiting door-to-door solicitation that is conducted in a manner that interferes with the peaceful enjoyment of their homes and property and during those times when such solicitation is most intrusive and disruptive; to aid crime prevention and detection; and to ensure that persons engaged in door-to-door commercial solicitation to residential properties have obtained required state registrations and licenses.

### **Section 6-2.2: Definitions**

As used in this Ordinance, the term "commercial solicitation" applies to the solicitation of residential property dwellers at their homes and means: to offer goods, services or real property for sale or rent or to provide information for the purpose of promoting the sale or rental of goods, services, or real property; provided, however, that offering goods or services for sale as part of fundraising for a non-profit organization shall not constitute commercial solicitation.

### **Section 6-2.3: Permit Required**

- A. It shall be unlawful to engage in door-to-door commercial solicitation without a permit from the Town Clerk pursuant to this Ordinance.
- B. It shall be unlawful to engage in door-to-door commercial solicitation between 8:00 p.m. and 9:00 a.m.
- C. It shall be unlawful to engage in door-to-door commercial solicitation that results in the placement of products or promotional materials in a location that obstructs any entrance to a residence or business. Entrances include, but are not limited to, driveways, walkways and doors. Products and promotional materials must be hand-delivered to the owner or occupant of the residence or building or placed / attached at the doorway of the residence or building in a manner that does not obstruct nor damage the use that doorway.
- D. The provisions of this section shall not apply to home visits by prearranged appointment.

### **Section 6-2.4: Permit**

Applications for permits under this Ordinance shall be on forms provided by the Town Clerk. The form shall elicit at least the following information:

- A. Name, address and telephone number of the applicant;
- B. Physical description of the applicant;

- C. Name, address and telephone number of the applicant's employer;
- D. Description of the motor vehicles to be used by the applicant in conducting the solicitation;
- E. Brief description of the types of goods or services to be offered for sale by the applicant, and
- F. For any applicant whose activities would constitute the transient sale of consumer merchandise, as defined in 32 M.R.S.A. Sec. 14701, a copy of the license issued under 32 M.R.S.A. Sec. 14703, as may be amended from time to time.

#### **6-2.5: Issuance and Term**

- A. The Town Clerk shall issue an approved permit upon receipt of a completed form provided that there have been no complaints filed with the Town against the permittee during the most recent permit term. If complaints have been filed against the permittee, the Board of Selectmen shall review the permit application and shall approve or deny the application as may be appropriate in the interest of public safety.
- B. Each permit shall expire thirty (30) days after issuance but may be renewed by the Town Clerk for additional (30) days periods upon request of the permittee if all of the original application information remains valid.
- C. Each permit shall contain the name, address, physical description and organizational affiliation of the applicant; a description of the solicitation activity to be engaged in; an expiration date; and the signature and seal of the Town Clerk. The Town Clerk shall keep a record of all permits.

#### **6-2.6: Possession and Presentation**

Every person engaged in door-to-door commercial solicitation shall have a valid proof of permit, as required by this Ordinance, in his or her possession at all times while so engaged in the Town and shall present the proof of permit for inspection upon request of any person.

#### **6-2.7: Violations**

- A. It shall be a violation of this Ordinance to engage in door-to-door commercial solicitation activity prohibited by Section 3 or to disregard a clearly visible sign on private property that prohibits commercial solicitation.
- B. Any person who violates any provision of this Ordinance shall be subject to a fine as set forth on a fee schedule established by vote of the Board of Selectmen each year, after notice and hearing. Each violation shall constitute a separate offense.

PASSED 06-10-1986; AMENDED 06-12-2002; AMENDED 06-21-2011; AMENDED 06-12-2012; AMENDED 12-09-2014

## 6-3 VICTUALER & LODGING LICENSES

### 6-3.1 Definitions

The following definitions (as found in Title 22 M.R.S.A., Section 2491) shall have the following meanings for use in this Ordinance.

**Camping Area** - "Camping area" means, in addition to the general accepted interpretations, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents or recreational vehicles are permitted to be parked for compensation either directly or indirectly.

**Catering Establishments** - "Catering establishments" means any kitchen or similar place in which food or drink is prepared for sale or service elsewhere or for service on the premises during special catered events.

**Cottage** - "Cottage" means a single structure where sleeping accommodations are furnished to the public as a business for a day, week, or month, but not for more than the entire summer season.

**Culinary Tasting Event** – "Culinary tasting event" means an activity in which food and/or drink is prepared for on-site consumption in a very limited amount by any one individual for sampling and/or comparison purposes only and not meant as a full meal.

**Eating And Lodging Places Or Lodging Place** - "Eating and lodging place" or "lodging place" means every building or structure or any part thereof kept, used as, maintained as, advertised as or held out to the public to be a place where eating and sleeping or sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes, bed and breakfasts and cottages.

**Eating Establishment** - "Eating establishment" means any place where food or drink is prepared and served or served to the public for consumption on the premises or catering establishments, or establishments dispensing food from vending machines, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving food, retail frozen dairy product establishments, airports, parks, theaters, vacation camps or any other catering or non-alcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.

**Farm and Food products** – Any agricultural, horticultural, forest or other product of the soil or water, including, but not limited to, fruits and fruit products, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, maple products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, firewood and Christmas trees. (06-21-2011)

**Farmers' Market** – A building, structure or place used by two (2) or more farmers for the direct sale of farm and food products to consumers. A person may not sell farm and food products at a market labeled "farmers' market" unless at least 75% of the product offered by that person was grown or processed by that person or under that person's direction. A product not grown or processed by that person must have been purchased directly from another farmer. (06-21-2011)

**Mobile Eating Place** - "Mobile eating place" means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

**Vending Machine Establishment** - "Vending machine establishment" means any establishment preparing foods for vending machines dispensing foods other than in original sealed packages.

**Vending Machine** - "Vending machine" shall mean any self-service device offered for public use, which, upon insertion of a coin, coins, or token by other similar means, dispenses unit servings of food without the necessity of replenishing the device between vending operations.

**Retail Frozen Dairy Product Establishment** - "Retail frozen dairy product establishment" means any place, premise or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and related food products are prepared for consumption on or off premises.

### **6-3.2**

Any person, corporation, firm or co-partnership operating or managing any eating establishment or lodging place in the Town must be licensed to do so by the Maine Department of Health and Human Services. (06-21-2011)

### **6-3.3**

No person, corporation, firm or co-partnership shall operate as an eating establishment without first obtaining a victualer license from the Municipal Officers of the Town of Kennebunk. Said victualer license shall not be granted without proof that the applicant possesses or is in the process of obtaining an applicable state license.

A copy of said license or approved document by a state inspector must be submitted for all renewals with the application for a victualer license before a victualer license will be issued. (2-24-2010)

Victualer licenses will set forth the maximum number of seats permitted for each licensee. Licensees must comply with the seating capacity requirements contained in the Town victualer license, regardless of whether a conflicting number exists in state license applications, approvals or other documents. Failure to comply with the seating capacity limitations contained in the victualer license shall be grounds for license revocation under this Ordinance. (06-21-2011)

#### **6-3.4**

No person, corporation, firm or co-partnership shall operate as an innkeeper, tavernkeeper or lodging house without first obtaining a lodging license to do so from the Lodging Licensing Board of Kennebunk, in accordance with Title 30-A, M.R.S.A., Sections 3811-3812, as well as any applicable state licenses.

All victualer and lodging licenses are site-specific. Each site requires a separate license. Any change in site location requires a new application by the owner of said business from the Town Clerk's office.

#### **The Fees for victualer and lodging licenses are in the Fee Schedule:**

- 1.) Victualer License \* \*\*
  - a) Culinary Tasting Event
  - b) Mobile Eating Place
  - c) All other Eating Establishments
  
- 2.) Lodging (Innkeeper) License \* \*\*

\* Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

\*\* For new applications the fee may be set by the Board of Selectmen. (2-24-2010)

#### **6-3.5 Issuance and Revocation/Suspension of Licenses**

- A) Victualer Licenses. The Municipal Officers shall hold a Public Hearing within thirty (30) days following the Town Clerk's receipt of a completed application and payment of appropriate fee(s). The Municipal Officers, called the "Victualer Licensing Board," shall meet on a date and at a time and place in said Town, which they shall appoint, by posting notices in at least two (2) public places, at least seven (7) days prior to the meeting, stating the purpose for the meeting. Notwithstanding any contrary provision

of this Ordinance, the Town Clerk or designee, and the Town Manager or designee shall have the authority to issue renewal licenses under this Ordinance, provided that a license has not been suspended or revoked during the prior license year. If a license has been suspended or revoked during the prior license year, the renewal license application shall be reviewed by the Licensing Board. (06-14-06; 2-24-2010; 06-21-2011)

A victualer license shall be granted if the property in question complies with all federal, State, and local laws and the applicant demonstrates that the victualer's premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety or welfare. (06-21-2011)

All victualer licenses shall expire on May 31 annually; provided however, that any license issued after March 1 shall be valid until May 31 of the following year. The Town Clerk shall notify all currently licensed establishments of the need to renew. Victualer licenses must be displayed for the public on the premises. (06-21-2011)

A victualer's license may, after notice and public hearing, be suspended or revoked by the Victualer Licensing Board for non-compliance with local and state laws and regulations. (06-21-2011)

When the Town Manager or designee believes a victualer license should be suspended or revoked, he shall notify the Victualer Licensing Board and it shall give notice of a public hearing in the same manner as set forth above to decide whether such suspension or revocation shall be ordered. (2-24-2010; 06-21-2011)

Whenever, upon inspection, conditions are found that violate this Ordinance or regulations adopted thereunder, or which may endanger the life, health or safety of persons patronizing any victualer established under this Ordinance, the Code Enforcement Officer or designee may request an emergency suspension of the victualer license issued and shall provide a copy of the notice in the same or faster means to the licensee. The Victualer Licensing Board may grant such an emergency suspension subject to reinstatement following a public hearing before the Board if cause is not shown by the Code Enforcement Officer or designee. (06-21-2011)

A licensed victualer may, at any time after the suspension of the license, make application in writing for the reinstatement of the license to the Town Clerk and such application shall be submitted to the victualer Licensing Board for action. (06-21-2011)

B) Lodging Licenses. The Municipal Officers shall act as the Town's Lodging Licensing Board and shall have the authority to grant, deny, suspend or revoke any lodging license in accordance with state law, as set forth in Title 30-A M.R.S.A., Sections 3811-3814. The Lodging Licensing Board shall meet annually during the month of May on a date and at a time and place in the Town that they determine or at any other time if necessary. At least seven (7) days before the meeting, the Board must post notices stating the purpose of the

meeting in at least two (2) public places in the Town. The Lodging Licensing Board shall license as many persons of “good moral character” as will not adversely affect the public and general welfare. A lodging license shall be granted if the property in question complies with all federal, state, and local laws and the applicant demonstrates that the premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety and welfare. The license must specify the building in which the business will be conducted and any licensing restrictions and regulations that the Lodging Licensing Board considers necessary. (06-21-2011)

The Lodging Licensing Board may revoke or suspend any lodging license in accordance with state law. A lodging license may not be revoked or suspended until an investigation and hearing have taken place and the licensee has been afforded his/her due process under the law. (06-21-2011)

All lodging licenses must be displayed for the public on premises and shall expire one year after issuance. The Town Clerk shall notify all currently licensed establishments of the need to renew. (06-21-2011)

C) No license shall be transferred or assigned by the business operator. The business operator must be the licensee. (06-21-2011)

D) The issuance of the licenses provided for in this section of the ordinance does not provide exemption from other local laws, ordinances or regulations. (2-24-2010)

E) A temporary victualer license may be approved by the Town Manager or designee, provided that the applicant has no prior safety violations. Such a temporary license shall be valid for no more than thirty (30) days and shall be reviewed by the Board of Selectmen before the expiration of that time period at a duly noticed public hearing held in accordance with the licensing procedures set forth above. (06-21-2011)

### **6-3.6 Right to Enter Premises**

The Town Manager or designee has the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed pursuant to this section of the Town Ordinances where he or she has reason to believe there is an immediate threat to the health, safety or general welfare of the public at large. (2-24-2010)

### **6-3.7 Fines and Penalties**

Any person, corporation, firm or co-partnership that operates any eating establishment, eating and lodging place, lodging place or camping area without first obtaining a license as required by this Ordinance shall be punished, upon adjudication, by a fine as set by the Board of Selectmen’s fee schedule, and upon a second or subsequent adjudication, shall be punished by a fine as set by the Board of Selectmen’s fee schedule. Each day any such

person, corporation, firm or co-partnership operates without obtaining a license constitutes a separate offense.

### **6-3.8 Exemptions**

Private homes shall not be deemed or considered lodging places and subject to a license where not more than 3 rooms are let. A license shall not be required from any boarding care facilities or children's homes, which are licensed by the state.

Stores or other establishments, where food or drink is sold for consumption from the original containers, and which are not classified as an eating establishment, do not have tables, chairs, glasses or other utensils provided in connection with such sale, shall not be considered eating establishments within the meaning of this Ordinance. At such establishments, straws or spoons may be provided to aid in the consumption of such food and drink, provided they shall be supplied in original individual single service sterile packages. (2-24-2010; 06-21-2011)

Nonprofit organizations including, but not limited to, churches, 4-H clubs, scouts, schools and agricultural societies shall be exempt from this Ordinance's rules and regulations relating to dispensing foods and non-alcoholic beverages at not more than 12 public events or meals within one calendar year.

Businesses participating in a farmers' market located in a Town approved location are exempt from the requirements of this Ordinance during the hours the farmers' market is in operation. (06-21-2011; 04-12-2016)

### **6-3.9 Special Events**

Businesses that currently hold appropriate licenses from the state Department of Health and Human Services may apply for a Town victualer license to sell at special events for example, but not limited to: May Day, Concert in the Park, August Sidewalk Sales Days, Christmas Prelude, or any other public event on public or town owned property.

Applicants must provide their valid state licenses to the Town Clerk's Office in advance of the event. The application submitted to the Town Clerk's Office must include a copy of the current, valid state licenses (if not on file with the Clerk's Office) and payment of the fee as set by the Board of Selectmen.

A) For currently licensed Kennebunk businesses:

See the Fee Schedule for a 1 or 2 day event.

See the Fee Schedule for 3 days or more, but no more than 30 day event

A business is allowed up to two (2) remote locations within the designated event area, provided the vendor has an existing Kennebunk victualer license.

B) For all other businesses not holding a Kennebunk victualer license:  
See the Fee Schedule for the Fee, per event

All other applicable provisions of the Victualer & Lodging License Ordinance govern the issuance of any license. (2-24-2010; 06-21-2011)

### **6-3.10 Outdoor Dining Permits**

The outdoor expansion of any eating establishment onto a street, way or public place in the Town shall require an outdoor dining permit issued pursuant to rules and regulations established by the Board of Selectmen. Among other requirements, outdoor dining permit applicants shall provide proof of insurance and ensure ADA compliance. (06-21-2011)

### **6-3.11 Fees**

Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

### **6-3.12 Administrative / Housekeeping Adjustments**

The Board of Selectmen shall have the authority, after public notice and hearing, to draft and adopt regulations implementing the terms of this ordinance on any matter not otherwise expressly provided for herein or otherwise by law.  
(2-24-2010)

ADOPTED JUNE 15, 1994; AMENDED 06-12-2002; 06-09-2004, 06-14-06;  
AMENDED 02-24-2010; AMENDED 06-21-2011

## **6-4 WRECKER/TOWING SERVICES**

### **4.1 Eligibility**

The applicant shall have its principal place of business in the Town of Kennebunk and be an auto-related business. Wreckers shall be registered in the name of the applicant, with storage facilities at the place of business, so zoned.

### **4.2 Application**

Any person or company desiring to perform towing service at police request shall submit an application to the Chief of Police. Within 30 days after receipt of application, the Chief shall conduct an investigation of the applicant's past record of performance in the wrecker/towing business and the adequacy of the applicant's equipment and storage facilities

### **4.3 Basic Equipment Required**

The wrecker shall be in good repair with proper lights as required by State Statute in addition to the following:

- A) Set of dolly wheels**
- B) Starting equipment**
- C) Broom and shovel**
- D) Tire changing equipment**
- E) Fire extinguisher**

### **4.4 Insurance Required**

No wrecker shall be issued a permit or license until the applicant has deposited with the Chief of Police a certified copy or evidence of the following policies:

- A) Garage Keepers Insurance Policy** covering fire, theft, windstorm, vandalism and explosion for each vehicle suffering damage or loss being deemed a separate claim.
- B) Road Service Liability Policy** covering the lifting, hoisting and towing of vehicles in the minimum amount of \$300,000.
- C) Garage Keeper's Liability Policy** covering the operation of licensee's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of \$250,000 for any one person injured or killed, a

minimum of \$500,000 for more than one person injured or killed in any accident, and a minimum of \$25,000 for property damage.

Each policy shall carry an endorsement by the carrier providing thirty (30) days notice to the Town of Kennebunk in the event of any change of coverage or cancellation. All policies shall contain an endorsement holding harmless the Town of Kennebunk or any of its officers or employees.

#### **4.5 Inspection of Wrecker and Equipment**

The Chief of Police shall conduct a scheduled inspection of the wrecker and equipment annually.

#### **4.6 Response Time**

A wrecker should be able to respond to the scene within a reasonable length of time from receiving the request from the Police.

#### **4.7 Cleaning of Road**

The wrecker operator shall sweep glass and other litter from the road before towing vehicle and leaving scene.

#### **4.8 Storage of Vehicles**

The applicant must provide a secure storage area with the Town of Kennebunk for at least one vehicle.

#### **4.9 Notice of Violation**

Any applicant who does not comply with the above ordinance will be so notified by the Town Manager upon written proof from the Chief of Police of the violation.

PASSED AS POLICY BY SELECTMEN 06-01-1982

## **6-5 MASS GATHERINGS**

### **5.1 Permit Required**

No person, corporation, partnership, association or group of any kind shall sponsor, promote, or conduct a mass gathering, which shall be deemed to mean any gathering held outdoors with the intent to attract the continued attendance of 1,000 or more persons for five (5) or more hours, without first procuring from the Municipal Officers a license therefore.

No license shall be granted by the Municipal Officers unless the applicant satisfies the Municipal Officers that the requirements of the within Ordinance are met, and that the facilities required shall be available for such events in the area to be used and no events shall be held unless facilities are available.

The Municipal Officers shall hold a Public Hearing for consideration of applications for a Mass Gathering License, after giving public notice at the applicant's expense, which shall be prepaid, stating the name and business address of the applicant, the location, date of the mass gathering and the time and place of hearing, printed at least seven days prior to the date of hearing in a newspaper having general circulation in the Town of Kennebunk. The filing fee of said application will be as shown on a fee schedule set by vote of the Board of Selectmen. (06-12-2002)

### **5.2 Water Supply**

Water supplies of potable quality shall be reasonably spaced throughout the area to be used with a minimum amount available of one (1) gallon per day per person. Said requirements shall be waived if adequate Town water supply under pressure is available: however, each water supply facility shall have adequate spigots with cup dispensers. Such water may be batch chlorinated in a tank to provide a chlorine residual of at least 5 parts per million.

### **5.3 Sanitation**

Toilets should be provided at a rate of one for each 150 persons. Urinals and sanistands or "Porta-Johns" may be substituted for the required number of toilets: twenty-four (24) inches of trough urinals in a men's room shall be considered the equivalent of one urinal or toilet. Sanitary facilities should be conveniently accessible and well identified. Each toilet should have a continuous supply of toilet paper.

Service buildings or rooms housing necessary plumbing fixtures will be constructed of easily cleanable, non-absorbent materials. Separate service buildings or rooms containing sanitary facilities, clearly marked, will be provided for each sex and each toilet room should be provided with self-closing door to insure privacy or the entrance will be screened so that the interior is not visible from the outside.

At each toilet facility, there shall be hand-washing facilities, which may utilize stored water with outlets equipped with spring operated spigots, with adequate provision for disposal of waste water to soakage pits and with soap dispensers available.

Adequate metal, wood or plastic containers with a height of at least 2 feet and a diameter of at least 2 feet shall be spaced in the area to take care of solid waste and garbage, with at least one container for each reasonably anticipated 100 persons. Within 24 hours after the close of the events such waste material shall be removed to a public dump or other licensed solid waste facility.

#### **5.4 Safety**

A first aid facility shall be provided on the grounds with at least one ambulance in attendance with minimum staffing of two Registered Nurses and Emergency Medical Technician, respectively.

Off the street parking facilities shall be furnished with at least one car space with adequate access ways for each six persons reasonably expected to attend. A uniformed police officer or constable shall be provided to direct traffic to and from public ways with at least one officer for each reasonably expected 500 persons.

#### **5.5 Sound**

The maximum permissible sound pressure level of any continuous, regular, frequent, intermittent or periodic source of noise produced by any activity regulated by this Ordinance shall be established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines, at a height of at least four (4) feet above the surface of the ground, with noise level averaged over a fifteen minute period, exclusive of ambient noise.

##### **Sound Pressure Level Limits**

Measured in dB(A)'s

	7AM-8PM	8PM-7AM
Residential & Farm & Forest Districts	55	45
Business & Industrial Districts	60	60

#### **5.6 Bond**

Prior to the issuance of the license and the holding of the event, the applicant shall furnish a corporate surety bond from a company authorized to do business in Maine insuring that the grounds will be cleaned of waste no later than 48 hours after the event. Damages to public

or private property arising out of or in connection with the event shall be paid from the surety bond, within 30 days of the time when the amount and the causation of such damages has been established. The surety bond shall be in the amount of \$5,000 for each reasonably expected 1,000 persons in attendance.

The applicant shall file with his application adequate proof that he has authority from any land-owner to use his property and shall furnish a plan showing the size of the area to be used, with designated locations for drinking, toilet and washing facilities, waste containers, first aid facilities and off street parking.

### **5.7 Appeal**

Any applicant who has requested a permit and has been denied or any licensee whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to York County Superior Court under Rule 80-B of the Maine Rules of Civil Procedure.

### **5.8 Severability**

The invalidity of any provision of this Ordinance shall not invalidate any other part thereof.

**5.9** Fees shall be as shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 01-05-1983; AMENDED 11-30-1983; AMENDED 06-12-2002

## 6-6 SPECIAL AMUSEMENT PERMITS

### 6.1 Title

This Ordinance shall be known and may be cited as the Special Amusement Ordinance of the Town of Kennebunk, Maine.

### 6.2 Purpose

The purpose of this Ordinance is to control the issuance of special permits for music, dancing or entertainment in facilities licensed by the State of Maine to sell liquor by Title 28-A M.R.S.A. 1054.

### 6.3 Definitions

For the purposes of this Ordinance the words and phrases as used in this Ordinance are defined as follows:

**A) Ambient Noise:** Ambient noise is the all-encompassing noise associated with a given environment being a composite of sounds from many sources near and far. For the purposes of this Ordinance, ambient noise level is the level obtained when the noise level is averaged over a period of 15 minutes without inclusion of noise from isolated identifiable sources, at the location and time of day, near that at which a comparison is to be made.

**B) Compliance Report:** The source document prepared by the law enforcement officer after receiving a complaint from a complainant detailing an incident. The report when duly signed by the officer shall become a matter of record. The report shall remain on file until its use requires destruction or retirement. Each complaint shall be investigated by the responding officer and attested to as to the validity of said complaint.

**C) Decibel:** The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.

**D) Entertainment:** For the purposes of this Ordinance 'entertainment' shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value coincident to any music, dancing or live acts.

**E) Equivalent continuous sound level (Leq):** The measure that accounts for the moment-to-moment-fluctuations in noise levels from all sources during the sampling time period.

**F) Inspection Officer:** The Law Enforcement Officer acting in behalf of the Municipality to ensure proper enforcement of the provisions of this Ordinance.

**G) Licensee:** For the purposes of this Section 'licensee' shall include the holder of a license issued under the Alcoholic Beverages Statutes of the State of Maine, or any person, individual, partnership, firm, association, corporation or other legal entity, or any agent, or employee of any such licensee acting on behalf of such licensee.

**H) Sound Level:** Sound level (noise level), in decibels dB(A), is the sound measured with the A weighting and slow response by a sound meter level.

**I) Sound Level Meter:** Sound level meter shall mean an instrument including a microphone, amplifier, an output meter and frequency weighting networks for measurement of sound levels, which satisfies the standards of the American National Standards Institute.

#### **6.4 Permit Required**

No licensee for the sale of liquor to be consumed on his licensed premises shall permit, on his licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the Municipality in which the licensed premises are situated a Special Amusement Permit signed by at least a majority of the Municipal Officers.

Application(s) for all Special Amusement Permits shall be obtained from the Town Clerk. Applications for all Special Amusement permits shall be made in writing to the Municipal Officers and shall state:

- A. The name of the applicant;
- B. Applicant's residential address;
- C. Name of the business to be conducted;
- D. Business address;
- E. Nature of the business;
- F. Address of location to be used;
- G. Hours during which the business will be in operation;
- H. Whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically;

- I. Whether the applicant, including all partners or corporate officers, has ever been convicted of a crime punishable by incarceration for a year or more within the past five (5) years and, if so, the applicant shall describe specifically those circumstances; and
- J. Any additional information as may be needed by the Municipal Officers in issuing the permit including, but not limited to, a copy of the applicant's liquor license.

No permit shall be issued for any thing, or act, or premises, if 1) the premises or building(s) to be used for such purposes do not fully comply with this Ordinance, or any other applicable ordinances, articles, by-laws or rules and regulations of the Municipality and the laws of the State of Maine; or 2) the issuance of the permit would be detrimental to the public health, safety or welfare. (06-21-2011)

The fee for a Special Amusement Permit shall be as set by the Board of Selectmen's fee schedule.

The Municipal Officers shall, prior to granting a permit and after reasonable notice to the Municipality and the applicant, hold a public hearing within fifteen (15) days of the date when the request was received, at which the testimony of the applicant and that of any interested members of the public shall be taken.

Prior to obtaining a permit, the applicant must show the following at the public hearing required in this section:

1. The issuance of the requested permit will not be detrimental to the public health, safety or welfare;
2. The proposed activity to be licensed will not create a traffic hazard;
3. The applicant has ample parking to accommodate the proposed activity;
4. The proposed activity will not, either by reason of its scope or noise, adversely affect surrounding or abutting property and that it will not unreasonably interfere with the use, enjoyment and value of surrounding and/or abutting property;
5. The applicant is in conformance with all provisions of the Town zoning ordinance, all applicable health codes, and other applicable municipal, state and federal codes, ordinances, regulations and statutes;
6. In the case of a facility located in a residential zone, that the activities will not tend to change the residential character of the neighborhood; and

7. Neither applicant, nor its officers, agents or principal employees have been convicted of a crime punishable by incarceration for a year or more within the past five (5) years.

In making the determination of whether the applicant has satisfied the criteria set forth above, the Municipal Officers shall consider, but shall not be bound by, neighborhood opinion and sentiment. (06-21-2011)

A permit shall be valid only for the license year of the applicant's existing liquor license.

Any licensee requesting a Special Amusement Permit from the Municipal Officers shall be notified in writing of their decision no later than fifteen (15) days from the date the request was received. In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit until thirty (30) days after an application for a permit has been denied. Any licensee who has requested a permit and has been denied may, within thirty (30) days of the denial appeal the decision to the Board of Appeals in accordance with Title 30-A M.R.S.A., Section 2691.

All Special Amusement Permits shall be displayed so as to be visible to the public at the premises where the licensed activity is taking place. (06-21-2011)

## **6.5 Inspections**

Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a Special Amusement Permit are provided for or required by Ordinance or State law, or are reasonably necessary to secure compliance with any Ordinance provision or State law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official or employee of the Municipality authorized to make the inspection at any reasonable time that admission is required.

The Municipal Officers shall require an initial inspection of the premises where the licensed activity is taking place for overall ability to comply with the provisions of this Ordinance. Thereafter, annual inspections are required. The Inspection Officer shall record the findings by completing a compliance report. (06-21-2011)

In addition to any other penalty which may be provided, the Municipal Officers may revoke the Special Amusement Permit of any licensee in the Municipality who refuses to permit any such officer, official or employee of the Municipality to make an inspection or take sufficient samples of analysis, or who interferes with such officer, official or employee while in the performance of his duties; provided, that no license or Special Amusement Permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

## 6.6 Suspension or Revocation of a Permit

The Municipal Officers may, after a public hearing preceded by public notice to interested parties, suspend or revoke any Special Amusement Permits which have been issued under this Ordinance on the grounds that the music, dancing or entertainment so permitted constitutes a detriment to the public health, safety or welfare or violates this Ordinance and any Municipal ordinances, articles, by-laws or rules and regulations.

Any licensee whose permit has been revoked or suspended, may, within thirty (30) days of the suspension or revocation, appeal the decision to the Board of Appeals in accordance with Title 30-A M.R.S.A., Section 2691.

## 6.7 Rules and Regulations

**Noise Regulated:** An applicant for a Special Amusement Permit hereunder shall, as part of his application, demonstrate his ability to prevent the emanation of excessive noise from the premises sought to be licensed brought about by music, dancing, or entertainment except for radio or other mechanical device excluded under Title 28-A M.R.S.A. 1054.

**A) Sources of Noise:** Sources of noise contemplated by this Section shall include musical instruments, sound modification or amplification devices used in connection with musical instruments and/or other similar devices which produce, reproduce or amplify sound created by musical instruments. Sources of noise shall further include any noise or sound produced directly or indirectly by applicant's music, dancing or entertainment except for those musical devices specifically excluded under Title 28-A M.R.S.A. 1054.

**B) Noise:** Sources of noise shall be required to be muffled so as not to be objectionable due to intermittence, beat, frequency, shrillness or intensity of volume.

**C) Noise Control:** The maximum permissible sound pressure level of any continuous, regular, frequent, intermittent or periodic source of noise produced by any activity regulated by this Ordinance shall be established by the time period and type of land use district listed below. Sound pressure levels shall be measured at the lot line of the receiving property, at a height of at least four (4) feet above the surface of the ground, with noise level averaged over a fifteen (15) minute period, exclusive of ambient noise level.

Equivalent Continuous Sound Level (Leq) Limits:

Measured in dB(A)'s

Zone Classification	7AM-8PM	8PM-7AM
Residential	55 dBA	45 dBA

Commercial	60 dBA	50 dBA
Industrial	70 dBA	60 dBA

**D) Nuisance:** For the purpose of this Section the licensee or his authorized representative, shall not permit the use of his premises to result in any continued, excessive, or unreasonable loud noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health or safety of individuals; or which results in disturbing the peace and tranquility of the neighborhood.

**E)** For good cause shown, after public hearing, the Board of Selectmen has the authority to alter noise levels in specific cases provided five (5) or more members of the Board of Selectmen so vote.

Such rules and regulations shall be additional to and consistent with all sections of this Ordinance.

**6.8 Admission**

A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued a Special Amusement Permit may charge admission in designated areas approved by the Municipal Special Amusement Permit.

**6.9 Penalty and Severability**

Whoever violates any of the provision of this Ordinance shall be punished by a fine as set by the Board of Selectmen's fee schedule together with costs for use of the Municipality.

The invalidity of any provision of this Ordinance shall not invalidate any other part.

**6.10** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 01-05-1983  
 AMENDED 06-12-2002  
 AMENDED 06-11-2008  
 AMENDED 06-21-2011

## **6-7 PIN BALL MACHINES AND OTHER ARCADE GAMES**

**7.1** Pursuant to Title 8, M.R.S.A., Section 446A and Title 8 M.R.S.A., Section 441 et seq, the issuance, denial and revocation of Pin Ball Machine Licenses shall be administered by the Board of Selectmen.

**7.2** Pursuant to Title 8, M.R.S.A., Section 443 the fee for the issuance of a Pin Ball Machine License shall be as set by the Board of Selectmen's fee schedule.

**7.3** The Board of Selectmen shall also administer the issuance, denial and revocation of Arcade Game licenses, and set related fees, for those machines that may not fall into the statutory definition of Pin Ball Machine as set forth in Title 8, M.R.S.A., Section 442. Such arcade games include all of those machines similar to Pin Ball Machines, whether mechanical or electronic, that may be operated by the public for use as a game, entertainment or amusement, whether or not registering the score. (06-21-2011)

**7.4** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 09-14-1981; AMENDED 06-12-2002; AMENDED 06-21-2011

## 6-8 CABLE TELEVISION

### 8.1 Definitions

**A) 'Cable Television System'** shall mean any community antennae system or facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents of one or more apartment dwellings under common ownership, control or management.

**B) 'Cable Television Co.'** shall mean any person, firm or corporation owning, controlling, operating, managing or leasing a Cable Television System within the Town of Kennebunk, sometimes hereinafter referred to as 'the company'.

**C) 'Town'** shall mean the Town of Kennebunk and the area within its territorial town limits, and where applicable, its Municipal Officers and Representatives.

**8.2** No person, firm, or corporation shall install, maintain or operate within the town or any of its public streets or other public areas any equipment or facilities for the operation of a Cable Television System unless a franchise authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this Ordinance and unless said franchise is in full force and effect.

**8.3** The Municipal Officers of the Town may contract on such terms, conditions and fees as are in the best interests of the Municipality and its residents with a Cable Television Co. for the operation of a Cable Television System throughout the Town, including the granting of an exclusive franchise for the operation thereof for a period not to exceed fifteen (15) years.

Applicants for a franchise shall pay a nonrefundable filing fee to the Town as set by the Board of Selectmen's fee schedule to defray the cost of public notice, and advertising expenses relating to such applications. The applications shall be filed with the Town Manager and shall contain such information as the Town may require, including but not limited to a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two previous fiscal years, an estimated ten (10) year financial projection of its proposed system and its proposed annual municipal franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in both CATV and Microwave service including that of its officers, management and staff to be associated with the proposed operation.

Said Franchise Contract may be revoked by the Municipal Officers for good and sufficient cause, as provided in the Franchise Contract, after due notice to the company and a public

hearing thereon; with the right to appeal to the York County Superior Court under Rule 80-B of the Court Rules of Civil Procedure in accordance with due process.

**8.4** Before the Town solicits Cable Television proposals or entertains applications for renewal, the following procedures are required:

- (A) The Municipal Officers shall provide public notice and hold a public hearing to determine special local needs or interests in Cable Television programming and services and shall provide for a period of public comment on the same;
- (B) Any and all franchise applications and renewal applications, and related documents, shall be public records and the Town shall provide reasonable notice to the public that such records are available and open to inspection at the Town offices during normal business hours; and
- (C) Prior to granting any franchise or franchise renewal, the Municipal Officers shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a Cable Television System throughout the Town, and shall conduct a public hearing thereon with at least seven (7) days advertised notice prior to said public hearing.

**8.5** Upon execution of any such franchise contract, the Town may require the Cable Television Company to file a surety company performance bond in an amount and in such form as is acceptable to the Town. The amount of said bond, if required, shall not be less than the estimated cost of performing any work specified in the franchise contract. Said bond, if any, shall remain in effect until the Cable Television Company has completed any construction or reconstruction of the system as set forth in the franchise contract.

The Cable Television Company shall also, upon execution of such franchise contract, provide evidence of such public liability, copyright infringement, and other insurance as the Municipal Officers may require.        AMENDED 7-23-1996

**8.6** The Town of Kennebunk Board of Selectmen shall serve as a Cable TV Regulatory Board. The Board shall have the following duties:

- A)** Adopt such rules and regulations, as it may deem necessary for monitoring and regulating the operation of the system.
- B)** Make recommendations to the Cable Television Co. concerning educational and local interest programming.
- C)** Resolve complaints, disputes, or disagreements between subscribers and the company.

**D)** Have the authority to conduct public hearings and issue such appropriate orders as it may deem necessary to correct any deficiencies in the operation of said system. The Board's decisions and findings shall be final and binding upon all parties including the company, except such a decision or finding may be appealed to the York County Superior Court under Rule 80-B.

All such rules, regulations and orders of the Board shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems.

**8.7** Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 09-14-1976; AMENDED 06-12-2002; AMENDED 06-14-2011

## **6-9 DEMOLITION WASTES DISPOSAL ORDINANCE**

**9.1 Purpose:** The purpose of this Ordinance is to regulate the disposal of demolition wastes.

**9.2 Definitions:** 'Demolition Waste' shall mean lumber, pipe, bricks, masonry, demolished building debris, and other materials from razed structures.

### **9.3 Disposal:**

**A)** Demolition wastes shall not be disposed of at the Transfer Station or designated disposal site without first obtaining a Building Demolition Permit from the Building Inspector. Prior to the issuance of the Permit, the Town manager shall be notified by the Building Inspector so that appropriate disposal provisions may be arranged.

**B)** The Licensee shall transport such demolition wastes to the designated disposal site, and dump it in accordance with the Permit instructions. The Licensee shall furnish all necessary equipment to unload, and if necessary, level the demolition wastes material. All demolition waste loads must be covered.

**9.4 Fee:** The Licensee shall remit a fee as set by the Board of Selectmen's fee schedule per 6 cubic yard quantity of material or increments thereof, so disposed.

**9.5 Penalty:** Any person, firm or corporation violating the provisions of this Ordinance shall be subject to a fine as set by the Board of Selectmen's fee schedule for each offense to be used by the Municipality of Kennebunk.

**9.6 Fees** shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

PASSED 11-30-1983; AMENDED 06-12-2002; AMENDED 06-21-2011

## 6-10 SHELLFISH CONSERVATION ORDINANCE

**1) Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

**2) Purpose:** To establish a shellfish conservation program for the Town of Kennebunk which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means, which include:

Licensing.

Limiting the number of shellfish harvesters.

Restricting the time and area where digging is permitted.

Limiting the minimum size of clams taken.

Limiting the amount of clams taken daily by a harvester.

**3) Shellfish Committee:** The Shellfish Conservation Program for the Town of Kennebunk will be administered by the Shellfish Committee consisting of five members and two alternates to be appointed by the Board of Selectmen.

The Committee's responsibilities include:

Establishing annually, in conjunction with the Department of Marine Resources (DMR), the number of shellfish harvesting licenses to be issued.

Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing, in conjunction with and subject to the review of the DMR, a plan for implementing conservation measures.

Submitting an annual budget to the Town for the expenditures of funds for the purpose of shellfish conservation.

Keeping this ordinance under review and making recommendations for its amendments.

Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the DMR.

Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the DMR.

Submitting an annual report covering the above topics and all other committee activities to the Town of Kennebunk and to the DMR.

All regulatory decisions hereunder, except those relating to individual licenses, shall be forwarded to the Board of Selectmen who shall have authority to stay effectiveness thereon by so voting within 14 days of receipt by the Board of Selectmen, in which case the Board of Selectmen shall hold a public hearing thereon within 14 days thereafter, at which time the Shellfish Committee shall appear and explain its proposed regulatory decision.

#### **4) Definitions:**

**A. Resident:** For the purpose of this Ordinance, the term "Resident" shall mean a person who owns or rents real estate within the Town of Kennebunk, which is his or her permanent, fixed place of abode and principal place of residence. If a person claiming to be a resident neither owns nor rents real estate, they shall be required to produce such other evidence of municipal residency as may be required by the Town Clerk. A person shall not qualify as a resident of this Municipality unless he or she has maintained a permanent, fixed place of abode and principal place of residence within the Town of Kennebunk for three (3) months prior to the date his/her claim of municipal residence is made. A person shall cease to be a resident of the Municipality on the date he/she acquires a permanent, fixed place of abode and principal place of residence in any other Municipality or moves from the Town of Kennebunk.

**B. Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.

**C. Shellfish:** Clams and Inter-tidal Shellfish Resources: When used in context of this ordinance the words "shellfish", "clams", and "inter-tidal shellfish resources" mean soft shell clams (*Mya arenaria*).

**D. Municipality:** Refers to the Town of Kennebunk, Maine.

#### **5) Licensing: A municipal shellfish harvesting license is required.**

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance.

No license shall be granted hereunder for any commercial digging.

##### **A) Designation, Scope and Qualifications:**

**1) Residential Recreational Shellfish License:** This license is available to either residents or to real estate tax payers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the

use of himself and his family, but only during the shellfish harvesting season as established by the Shellfish Committee. Clams harvested cannot be sold or bartered.

**2) Nonresident Recreational Shellfish License:** This license is available to any nonresident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family only during the shellfish harvesting season as established by the Shellfish Committee.

**3) License must be signed:** The licensee must sign the license to make it valid.

**B) Application Procedure:** Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

**1) Contents of Application:** The application must be in the form of an affidavit and must contain the applicant's name, current legal address, birth date, height, weight, signature and whatever other relevant information the municipality may require.

**2) Misrepresentation:** Any person who gives false information on a license application will cause said license to become invalid and void.

**C) Fees:** The fees for the licenses are as stated below, are for the Town's fiscal year and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

**Resident Recreational:** As set by the Board of Selectmen's fee schedule

**Nonresident Recreational:** As set by the Board of Selectmen's fee schedule

**D) Limitation of Diggers:** Since clam resources vary in density and size distribution from year to year and over the limited soft shell clam producing area of the town, it is essential that the town carefully husband its shellfish resources. If, following the annual review of the town's clam resources, its size distribution, abundance, and the warden's reports, as required by Section 3, the Shellfish Committee, in consultation with the DMR area biologist, determines that limiting shellfish licenses for the following year is an appropriate shellfish management option, then it may do so.

The Shellfish Committee will determine the exact time and location of the shellfish beds that will be open for harvest in any given year. The harvesting season will be in

the fall, winter and spring months as June, July, August and September shall be excluded. Harvesting may also be limited to Saturdays, Sundays, and holidays, with hours beginning one hour before sunrise, and ending one hour after sunset, if the Shellfish Committee so determines.

Three months prior to the opening of the flats for harvesting, the committee shall report its findings and document recommendations for the number of recreational licenses to be made available for the following license-year to the Commissioner of DMR for concurrence. (11-15-05)

After receiving approval of the proposed number of licenses to be made available from the Commissioner of DMR, and prior to 6 weeks before opening, the Shellfish Committee shall notify the Town Clerk in writing of the number of shellfish licenses to be issued. (11-15-05)

Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper with general circulation in Town, which the Town Clerk considers effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the Municipal Offices until the period concludes.

The Town Clerk shall issue licenses to residents and nonresidents as allocated (Section E) for two weeks before the harvesting season commences. Any resident licenses unsold 30 days after the season opening can be offered to nonresidents.

Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

The only accepted method of harvesting will be by use of the hand-held clam rake, with tines two (2) inches apart, and with a handle no more than eighteen (18) inches long.

**E) Licensing:** Date(s) for obtaining a shellfish license shall be determined annually by the Shellfish Committee.

For each license category, the Town Clerk shall issue licenses in the following manner:

Residents: 90% of total number of licenses determined available

Nonresidents: 10 % of total number of licenses determined available

**F) License Expiration Date:** Each license issued under authority of this ordinance expires at midnight on the last day of the open harvesting season for the year for which it was issued.

**G) Fee Waivers:**

- 1) Recreational shellfish license fees will be waived for residents 70 years or older and under 12 years of age under adult supervision.
- 2) For persons over 65 years of age, two people can dig one peck on one license, two forks and one basket.
- 3) A license holder may have a guest, or guests assist him in the harvesting of shellfish as long as no more than one peck in total of shellfish is taken per license in any one day.

**H) Suspension:** If the Police Department presents to the Town Clerk evidence that any licensee has been convicted of two violations of this Ordinance within the license (July 1 to June 30) year, the Town Clerk shall give the licensee seven (7) days notice of the suspension of the license for thirty (30) days, stating the reason for the suspension. The licensee has the right to meet with the Town Clerk during that seven (7) day period to review the evidence of convictions in the Town Clerk's possession, and to present any evidence showing the licensee does not have the convictions. A third conviction of violations of this Ordinance in the same licensed year will result in forfeiture of the license for the remainder of the licensed year.

**I) Opening and Closing of the Flats:** The Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendations of the Shellfish Committee, and the DMR area biologist, that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen shall call a public hearing, and shall send a copy of the notice to the DMR. The decision of the Board of Selectmen made after the hearing shall be based on findings of fact.

**J) Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the municipality, which are less than two (2) inches in the longest diameter except as provided below. Undersized clams will be set on top of the mud/sand, and the digger shall spread a thin layer of mud/sand over them before leaving the area.

Definitions:

- 1) **Lot:** The word "lot" as used in this ordinance means the total number of soft shell clams in any one peck. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel, or other container constitutes a separate lot.
- 2) **Possess:** For the purpose of this section. "Possess" means dig, take, harvest, ship, transport and hold soft shell clam shell stock.

**3) Tolerance:** Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of the lot.

**K) Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R. S.A. Section 6671(10) by a fine of up to \$1500 per offense.

**L) Effective Date:** This ordinance, which has been approved by the Commissioner of DMR, shall become effective after its adoption by the municipality.

**M) Period of Ordinance:** This ordinance and any amendments thereto shall remain in effect until repealed by the Town or rescinded by the Commissioner of Marine Resources.

**N) Separability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

**O) Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the town is hereby repealed, and any other ordinance inconsistent is hereby deemed subordinate to the provisions hereof.

**P) Fees** shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

APPROVED AT TOWN MEETING JUNE 13, 2001;  
AMENDED 06-12-2002; 06-09-2004; 06-16-2005

## 6-11 PAWNBROKERS

### DEFINITIONS

The following words and phrases, when used in this chapter, will have the meanings respectively ascribed to them:

#### **Pawnbroker**

Any person whose business or occupation is to take or receive, by way of pledges, pawn or exchange, any goods, wares or merchandise, or any kind of personal property whatsoever, as security for the repayment of money loaned thereon at a stipulated rate of interest or at a stipulated amount of repayment, or who purchases any such property on condition of reselling the same to the seller thereof or his assignee at a stipulated price. The definition will not apply to banking institutions, brokerage houses, members of the stock exchanges, or persons who make loans exclusively upon stocks, bonds, bills of lading, warehouse receipts, mortgages, contracts, commercial paper, or other written or printed evidence of ownership of property or of indebtedness to the holder or owner of any such security.

#### **Permanent Place of Business**

Any building or other permanently affixed structure, including a home residence, which is owned or held under a twelve-month or longer lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in the sale of secondhand goods.

### PURCHASE FROM MINOR

A pawnbroker will not either directly or indirectly purchase or receive, by way of barter or exchange, any goods or articles of value from a person who has not attained the age of 18 except when said minor shall be accompanied by a parent or legal guardian who shall sign the transaction record in person before said dealer or collector.

### RECORDS

Pawnbrokers – Every pawnbroker, at the time of receiving any article pawned, pledged or received in exchange, or any other article or consideration, shall give the pawner a statement that the pawnbroker will return the article at a stipulated price which shall be computed in accordance with the requirements of 30-A M.R.S.A. Ch. 183, Subchapter VI, and shall complete in duplicate a sworn statement, forms for which shall be furnished by the Police Chief detailing the proven identity of the seller, including full name, date of birth, sex and address and type of identification of the person with whom the transaction is being made. If the identity of the seller cannot be proven, no transaction may occur. The pawnbroker shall record the day, month, year and hour when the transaction took place and a full, accurate and detailed description, including all distinguishing marks, brand name, model number, serial number and color, of each article so pawned, pledged or exchanged so as to make its identification certain and plain and the fair market value thereof and the price paid by the

licensee and the source from which and the time when the pawner, pledger or vendor procured the same and cause such statement to be signed and sworn in duplicate by the person with whom such transaction has been made. The pawnbroker shall deliver or cause to be delivered at the Criminal Investigation Division of the Kennebunk Police Department a copy of the record, as soon as possible, but no later than 72 hours after completion of the transaction. Said dealer shall retain a copy of the record at his local place of business, which, along with any article therein listed, may be inspected by any duly authorized police officer. All items taken in by the dealer shall be photographed by said dealer and all such photographs will be kept by the dealer for a period of 6 months and made available to any authorized police officer. No article so purchased shall be sold, changed, or altered in its appearance or otherwise for thirty days after the purchase thereof except with the written consent of the Town of Kennebunk's Chief of Police, but in no case within 72 hours after said purchase. The pawnbroker shall retain the other copy of the record on file for a period of not less than two years, during which time the record may be inspected at any reasonable time by a law enforcement officer. Said dealer shall employ the use of electronic surveillance equipment to visually record transactions and make any/all surveillance footage available to any authorized police officer.

#### POSTING OF LAWS; DISPLAY OF SIGN

Every pawnbroker shall post in a conspicuous location within the place of business a copy of the applicable statutes of the State of Maine and a copy of this chapter and will further display within the place of business a sign, legible inscribed in large letters in the English language, with the name and occupation of the pawnbroker.

#### STATE LAW TO APPLY

Except to the extent that this chapter contains a contrary provision, all provision of 30-A M.R.S.A §§3960 to 3964-A and 3901 shall be additional requirements to the provisions of this chapter.

#### LICENSE REQUIRED; VIOLATIONS AND PENALTIES

No person will engage in the business of pawnbroker without first obtaining a license issued by the Town of Kennebunk for such activity. Any person who violates the provisions of this chapter commits a civil infraction for which a maximum penalty of \$50 for each occurrence will be imposed. For the purpose of this chapter, each day any person operates contrary to the provisions of this chapter is a separate violation. The Board of Selectmen shall have the authority to adjust this licensing fee as necessary.

#### APPLICATION OF LICENSE

Application for a license for pawnbroker will be made to the Town Clerk, with payment of the fee, and in accordance with the procedures set forth in the Code of the Town of Kennebunk. No license shall be issued to any person unless all buildings and properties to be used in

connection with the licensed activity are in compliance with applicable zoning, building and fire safety codes.

### DISQUALIFICATION

A license will not be issued to any person who is not of good moral character. For purposes of this section, an applicant shall be deemed not to satisfy this standard if he or she has been convicted within the last 10 years of a crime carrying a maximum term of imprisonment of more than one year.

### EXCLUSIONS

Specifically excluded from the provision of this chapter are the following:

- A. Purchases from private residents by citizens not engaged in a dealer-type business.

### INSPECTIONS

- A. The Chief of Police or any officer authorized by him may, at any time, enter upon any premises used by a licensed pawnbroker for the purposes of his business to ascertain how he conducts his business and examine all articles taken in pawn or kept or stored in or upon said premises and all books and inventories relating thereto.
- B. Every such pawnbroker, his clerk, agent, servant or other person in charge of the premises shall exhibit to such officer on demand any or all such articles, books and inventories.

### LICENSE FEES AND AMENDMENTS

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.

To be established by the Board of Selectmen.

ADOPTED 06-14-2016

**SECTION 7**

**ORDINANCE RELATING TO GROWTH CONTROL  
REPEALED**

## **SECTION 8**

### **ORDINANCES RELATING TO:**

- 1) STREET DESIGN & CONSTRUCTION**
- 2) EXCAVATING WITHIN ROADWAYS  
[STREETS & SIDEWALKS]**

## SECTION 8 – STREET DESIGN AND CONSTRUCTION STANDARDS ORDINANCE

- 8.1 TITLE AND AUTHORITY: This ordinance shall be entitled "Kennebunk Street Design and Construction Standards Ordinance" and is enacted pursuant to the provisions of 30-A M.R.S.A. Sections 3001 to 3003.
- 8.2 PURPOSE: The purpose of these provisions is to establish appropriate standards for the design and construction of all streets in the Town, and to establish a procedure for the petitioning of streets to the Town for acceptance as Town Ways.

These street standards are designed to promote the following objectives:

- to promote and conserve the health, safety, convenience, and welfare of the Town's inhabitants,
- to complement and enhance the goals and policies of the Town Comprehensive Plan,
- to provide safe and convenient pedestrian circulation,
- to provide safe and convenient vehicular access and circulation,
- to minimize long term street maintenance and repair costs, and
- to minimize the creation of impervious surface in order to limit the impact of runoff on the Town's water resources.

### 8.3 DEFINITIONS:

A.D.T: Average daily traffic (per latest edition of the I.T.E. Trip Generation Manual).

Driveway: A private entrance from a street or right-of-way to a building or buildings on abutting grounds. The driveway itself shall not constitute the means of legal access to a lot.

Street: The word "street" means and includes such public or private ways as alleys, avenues, highways, roads, streets and other rights-of-way which are used or intended to be used for passage or travel by motor vehicles. The term street shall not include driveways as defined above.

Town Way: A street which has been accepted by the Town and for which the Town becomes responsible for its maintenance, repair, plowing and other similar Town services.

### 8.4 PROCEDURES:

8.4.1 General: All streets which are laid out or proposed for Town acceptance shall be in accordance with Maine law and the provisions of this ordinance as follows:

- A. Subdivisions: The Planning Board shall not approve any subdivision plan unless proposed street(s) are designed and to be constructed in accordance with the standards of this ordinance. Final subdivision plan approval by the Planning Board shall not be deemed to constitute or be evidence of acceptance by the Town of any street, easement or other open space.
- B. Site Plans: The Site Plan Review Board shall not approve any site plan unless proposed street(s) are designed and to be constructed in accordance with the standards of this ordinance. Final site plan approval by the Site Plan Review Board shall not be deemed to constitute or be evidence of acceptance by the Town of any street, easement or other open space.
- C. Petition to Town Legislative Body for acceptance of a street as a Town Way: All petitions for the acceptance of a street(s) as a Town Way shall be made to the Board of Selectmen, prior to being brought before Town Meeting, and shall be in accordance with Maine law and the provisions of this Ordinance. "Unpaved Local Streets" are not eligible for petitioning or acceptance as Town Ways.

#### 8.4.2 Application Procedure For Street Acceptance:

- A. All petitions for street acceptance shall be accompanied by an application which includes the following information:
  - 1) Petitioner's name, address, phone, signature and date,
  - 2) Names of owner(s) of record of the land upon which the proposed Town Way is located, including any proposed easements which are proposed as part of the petition to the Town,
  - 3) A statement of any legal encumbrances on the land upon which the proposed Town Way is located,
  - 4) Legal description of proposed Town Way (and all associated easements) giving complete descriptive data by bearings and distances per a Maine licensed standard boundary survey, along with a copy of such survey, and verification that permanent monumentation has been set at all street intersections and points of curvature.
  - 5) A written certification by a professional engineer, registered in the State of Maine, certifying that the proposed Town Way meets or exceeds the design and construction standards set forth in this ordinance,
  - 6) One mylar and two sets of blue prints of as-built conditions of the proposed Town Way conforming to the plan requirements and standards of Section 8.6.

where underground utilities have been installed, the as-built plans shall show the final, installed location of such lines,

- 7) Date that street construction was completed, including the dates that the base course and surface course of pavement were installed.
- B. Upon receipt of a petition and application for a proposed street acceptance, the Board of Selectmen shall forward one set of plans to the Planning Board, who shall confirm the street's classification per Section 8.5, and one set of plans to the Town's consulting engineer who shall review and provide written comment back to the Selectmen. The engineer's comment shall state either that the street meets the Town's street design and construction standards as specified in Section 8.6, or shall provide a list of the standards which have not been met. The Town engineer's review shall include a field inspection of the proposed Town Way, to determine if there are any performance problems or structural failures which have occurred since the completion of the street construction.
  - C. When the Board of Selectmen determines that the proposed street meets or exceeds the design and construction requirements of this ordinance, they shall set and hold a public hearing on the petition. At or following the public hearing, the Board of Selectmen shall vote to place it on the next available Town Meeting Warrant.

## 8.5 STREET CLASSIFICATION:

The classification of an existing or proposed street shall be made by the Planning Board per 8.4.1.A. or Site Plan Review Board per 8.4.1.B. as applicable, after its consideration of the existing and proposed land use. For an existing street and/or extension of an existing street, the classification shall be based on existing and estimated ADT. For a proposed new street, classification shall be based on estimated ADT. (one single family home = 10 ADT)

- A. Arterial Street: An arterial street shall be defined as a major thoroughfare which serves as a major traffic way through Town and between towns, and whose primary function is traffic movement. Traffic volumes range from 10,000 - 30,000 vehicles per day. The following roadways shall be considered arterials:
  - Maine Turnpike
  - Route One
- B. Collector Street: A street with average daily traffic of over 250 vehicles per day, or a street serving as a feeder to an arterial and as a collector of traffic from minor streets. Streets classified under this category shall be further classified as either "rural" or "growth", based upon the guidelines of the Town's Comprehensive Plan.

- C. Minor Street: A minor street shall be defined as a street which generally serves to carry the least amount of traffic at the lowest speeds. It is also intended to provide a safe environment for residential neighborhoods. No minor street (or street section if it has more than one street connection) shall have an ADT greater than 250. Streets classified under this category shall be further classified as either "rural" or "growth", based upon the guidelines of the Town's Comprehensive Plan.
- D. Local Street: A minor residential street servicing no more than five residential lots/dwelling units. An unpaved local street shall not be eligible for Town services or for acceptance as a Town Way.
- E. Commercial/Industrial Street: A street servicing commercial and/or industrial land uses.

8.6 STREET DESIGN AND CONSTRUCTION STANDARDS: All proposed streets, street extensions, sidewalks and storm drainage systems shall be designed and constructed to meet the design standards of this section and of the relevant Appendix A details, unless otherwise varied per Section 8.8 of this Ordinance.

8.6.1 Plans: The plans and details which are submitted as part of an application shall be prepared and stamped by a professional engineer and shall include detailed construction drawings, drawn at a scale of no more than 50 feet to the inch, shall show a plan view, profile and typical cross-section of the proposed street(s), and shall include the following information:

- a) Date, scale and magnetic or true north arrow,
- b) Intersections of the proposed street with existing streets,
- c) All natural waterways and watercourses in or on land contiguous to the proposed street(s),
- d) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and/or watercourses,
- e) Complete curve data, including radii and tangent points, shall be indicated for all horizontal and vertical curves,
- f) Turning radii at all intersections,
- g) All centerline gradients
- h) The dimensions of lots, easements and building lines along the proposed street, and showing the names of the owners of such abutting property,
- i) The limits and location of street pavement and street rights-of-way, shoulders, sidewalks and curbs,
- j) The limits and location of existing and proposed sidewalks and curbing, and
- k) The location and size of existing and proposed overhead and underground utilities including the following:
  - 1) water

- 2) sewer
- 3) electric
- 4) telephone, cable
- 5) street lighting
- 6) fire suppression system and hydrants
- I) The name(s) of proposed street(s) which names shall not closely duplicate the names of any existing street names in the Town.

8.6.2 Design Standards: All proposed streets shall be designed and constructed to the following standards:

- A. Proposed streets shall conform to the Town's Comprehensive Plan.
- B. All streets shall be designed to provide safe pedestrian and vehicular travel.
- C. The arrangement, character, extent, width, grade, and location of all streets shall be considered in relation to existing or planned streets, topographical conditions, public convenience and safety, and the proposed use of the land to be served by the street. Grades of streets shall conform as closely as possible to the original topography.
- D. The Board may require the reservation of a 50 foot wide easement (or a width appropriate to meet the street as classified per Section 8.5) connecting the new street with an external boundary to provide a logical continuation of the street to an abutting site. This future connection will allow for safe and efficient traffic circulation.

All easements proposed under this regulation must be deeded to the Town.

- E. In the event that a residential development is proposed in an area also zoned for commercial use, the Board may require an increased right-of-way (per the standards of commercial streets) to accommodate potential development in the area.
- F. Developments containing over 25 dwelling units or which generate average daily traffic (ADT) of over 250 trips per day, shall have at least two street connections either with existing public streets, or with streets shown on an approved subdivision plan or site plan for which a performance guarantee has been filed and accepted.
- G. The design standards shown on Table A apply according to the street classification of Section 8.5.
- H. The centerline of the roadway shall be the centerline of the right-of-way.

- I. Dead End Streets - Except for streets classified as private rights-of-way, dead end streets shall be constructed so as to provide a cul-de-sac turn-around meeting the minimum requirements of Table A:

Where the cul-de-sac is located in a wooded area prior to development, a stand of trees shall be maintained within the center of the turnaround, unless otherwise waived by the reviewing board.

- J. Grades, Intersections and Sight Distances.

- 1) Grades of all streets shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards noted in Table A.
- 2) All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Reviewing Board so that clear visibility is provided for distances specified below.

<u>Street Class.:</u>	<u>Collector</u>	<u>Minor</u>	<u>Local</u>	<u>Comm./Indust.</u>
<u>Stop. Sight Dist.:</u>	200'	150'	150'	250'

Stopping sight distance shall be calculated with a height of eye at 3 1/2 feet and the height of object at 1/2 foot.

- 3) Where new street intersections or commercial/industrial curb cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, shall conform to the table below. Sight distance shall be measured from an eye point located 15 feet behind the edge of traveled way at an elevation of 3.5 feet above the finished grade surface to a height of object of 4.25 feet above the pavement in the centerline of the travel lane approaching the intersection. Where unavoidable obstructions are encountered at the 15 foot setback, the point of eye may be moved to a point no closer than 10 feet from the traveled way. If the special conditions of the site or of the use so warrant, the Board may require such additional sight distance as will enhance safety.

Posted Speed Limit (mph)	25	30	35	40	45	50	55
Sight Distance (ft)	300	350	400	450	500	550	600

- 4) Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the Comprehensive Plan or at other important traffic intersections. A distance of at least two hundred (200) feet shall be maintained between center lines of offset intersecting streets.

- K. Sidewalks and Curbing

Sidewalk and curbing shall be required within and along the public road frontage of all developments located in designated growth areas as specified by the

Kennebunk Comprehensive Plan and for all development for which any part is located within 1,000' of any school or any commercial zone. Where sidewalks exist adjacent to a proposed development, the new sidewalk shall be installed in a manner which connects to the existing sidewalk. Where installed, sidewalks and curbing shall meet the following minimum standards:

- 1) Sidewalks shall be located a minimum of four feet from the curb facing or edge of shoulder if the street is not curbed.
- 2) Bituminous sidewalks: The gravel aggregate sub-base course shall not be less than ten inches in thickness. The crushed aggregate base course shall be not less than two inches in thickness. The hot bituminous pavement surface course shall be put down in two lifts and shall be not less than two inches in thickness, after compaction.
- 3) Portland cement concrete sidewalks: The aggregate base shall be not less than six inches in thickness. The Portland cement concrete shall be reinforced with six inch square number ten wire mesh and shall be not less than four inches in thickness.
- 4) Type 1, 5" granite curbing shall be installed on a thoroughly compacted gravel base of six inches minimum thickness. Bituminous curbing shall be installed on the base course of the pavement. The specified pavement width shall be measured between the curbs. All curbs shall be vertical except when Type 5 sloped curbs are specifically requested or allowed by the Board. Granite curbing shall be used for traffic islands and intersections. Granite transition pieces shall be used between:
  - Granite inlet headstones and bituminous curb, and
  - Type 1 vertical curb and type 5 granite curb.

8.6.3. Construction Standards:

A. Minimum thickness of materials after compaction:

<u>CONSTRUCTION MATERIALS</u>	<u>MINIMUM REQUIREMENTS</u>				
	<u>Arterial</u>	<u>Collector</u>	<u>Minor/Local</u>	<u>Ind/Comm</u>	<u>Sidewalk</u>
Aggregate Sub-base Course (Max. sized stone = 4")	21"	21"	18"	21"	10"
Crushed Aggregate Base Course	3"	3"	3"	3"	2"

Hot Bituminous Pavement  
(After Compaction):

Total Thickness	4"	3"	3"	4"	2"
Surface Course	1 1/2"	1 1/4"	1 1/4"	1 1/2"	(Placed
Base Course	2 1/2"	1 3/4"	1 3/4"	2 1/2"	in 2 lifts)

B. Preparation:

- 1) Before any clearing has started on the right-of-way, the center line of the new street shall be staked and sidestaked at 50 foot intervals. Limits of clearing shall be marked by stakes or flagging.
- 2) Before grading is started, the right-of-way area directly dedicated to the construction of the roadway and shoulders, sidewalks and utilities shall be cleared of all stumps, roots, brush, and other objectionable material. All ledge, large boulders, and tree stumps shall be removed from this area.
- 3) Tree stumps and other organic materials shall be removed to a depth of 2 feet below the subgrade of the roadway. Rocks and boulders and ledge shall also be removed to a depth of 2 feet below the subgrade of the roadway. On soils which are not suitable for roadways, the subsoil shall be removed from the street site to a depth of two feet below the subgrade and replaced with gravel borrow meeting the State of Maine Department of Transportation's Specifications for Highways and Bridges, currently located in Section 700, Paragraph 703.20.
- 4) Side slopes shall not be steeper than a slope of 3 feet horizontal to 1 foot vertical, and shall be graded, fertilized, seeded and mulched according to the erosion control standards of the Maine Erosion and Sediment Control Handbook for Construction - Best Management Practices, 1991, or latest revisions thereof.

C. Base and pavement material requirements:

- 1) Aggregate Sub-base Course - MDOT 703.06(b) - Type D.
- 2) Crushed Aggregate Base Course - MDOT 703.06(a) - Type A.
- 3) Hot Bituminous Pavement:
  - a) Base Course: MDOT 703.09 - Grading B.
  - b) Surface Course: MDOT 703.09 - Grading C.
  - c) Sidewalks: MDOT 703.09 - Grading D.

- 4) Portland Cement Concrete for Sidewalks (when used) -MDOT 502.05 - Class AA.

#### 8.6.4 Storm Drainage Design Standards:

A. Adequate provision shall be made for disposal of all storm water collected in streets and areas tributary to the street system. A storm water management plan shall be prepared by a registered professional engineer in accordance with Urban Hydrology for Small Watersheds, T.R. 20 or T.R. 55, 1986 edition, published by the U.S. Soil Conservation Service, or latest revisions thereof.

- 1) All storm water systems shall be designed to meet the criteria of a 25 year storm based on rainfall data from weather bureau records for Portland.
- 2) Appropriate conveyances for outlets to drainage systems must be provided.
- 3) In any case, the minimum pipe size for any storm drainage pipe shall be 12 inches. Catch basins of an appropriate size and type shall be installed where necessary, and shall be located generally at the curb line. Catch basins shall be placed away from the line of traffic flow, however, shall be adequate in design and strength to accommodate vehicle traffic. Catch basins shall be specifically constructed to accept a granite inlet headstone.

a) Materials:

- 1) Storm drainage pipes shall be one of the following:
  - aluminized Type 11 culvert,
  - PVC-SDR 35,
  - reinforced concrete,
  - aluminum pipe.
- 2) Where the storm drainage pipe is to be covered by ten feet or more of fill material, pipe material shall be PVC SDR 35 or concrete.
- 3) Where storm drainage pipe may come into contact with salt water, concrete pipes shall be used.

b) Pipe Gauges: Metallic storm drainage pipe shall meet the following thickness requirements depending on pipe diameter:

Material

<u>Inside Diameter</u>	<u>Aluminum/Zinc Coated CMP Corrugated Aluminum Alloy</u>
15" to 24"	14 ga.
30" to 36"	12 ga.
42" to 54"	10 ga.
60" to 72"	8 ga.

- B. Existing or future downstream drainage requirements shall be studied to determine the effect on proposed drainage. The applicant shall demonstrate to the satisfaction of the Board that the storm drainage will not, in any way, overload existing or future storm drainage systems downstream from the proposed street. The drainage requirement for a two, ten and 25 year storm shall be evaluated to determine drainage system needs.
- C. For both upstream and downstream drainage, in determining the rate and volume of surface run-off, the following factors must be considered:
- 1) intensity of rainfall: 25 year design storm;
  - 2) timing of rainfall (e.g. falling on snow or during the spring snow melt);
  - 3) amount of precipitation occurring in the five days preceding the storm in question;
  - 4) hydrologic soil group (i.e. the soil's rate of water infiltration and transmission. The rates for soils are described in the Best Management Practices Handbook, 1991, or latest revision thereof);
  - 5) hydrologic conditions (soil's moisture content humus/organic content, temperature, and whether or not it is frozen);
  - 6) vegetative cover (vegetation helps soil dry out after a rainfall, intercepts some precipitation during the rainfall, and slows down the flow of water over the land);
  - 7) area of land covered by impervious surfaces (roads, sidewalks, roofs, driveways, patios, etc.);
  - 8) topography (slopes affect the rate of run-off; marshland reduces peak discharge rate by slowing down the rate of run-off);
  - 9) size and shape of watershed (peak discharge rates are slower in long, narrow watersheds, and vice versa).
- D. An underdrainage system shall be designed and installed to properly drain all springs or areas where the ground water level is within one foot of the bottom of road sub-base and would cause a hazard to the stability of the roadway base. Evidence that water level exceeds the one foot standard ( test hole data) shall be submitted as part of any application which does not include such an underdrainage system.

The underdrain shall be a minimum of 6" diameter perforated PVC SDR 35 pipe encapsulated with ¾" crushed stone inside a geotextile fabric. Holes shall be placed down.

- E. No storm water shall be permitted to drain across the surface of a street or an intersection.

#### 8.6.5 Storm Drainage Construction Standards:

- A. All storm drain construction shall be in conformity with State of Maine Specifications for Highways and Bridges, revision 1990, or latest revisions thereof.

- B. General Construction Requirements:

- 1) Trenching shall be accomplished in accordance with all appropriate state and federal safety requirements.
- 2) Drain alignment shall be straight in both horizontal and vertical alignment, unless specific approval of a curvilinear drain is obtained in writing from the Board.
- 3) Manholes shall be provided at all changes in vertical or horizontal alignment, and at all junctions. In straight runs, manholes shall be placed at a maximum of 300 feet intervals. Catch basins shall be connected to manholes on the main storm drain line. The maximum distance between catch basins and manholes shall be 250 feet.
- 4) Where necessary, outlets shall be terminated in an endwall of concrete construction, or shall be rip-rapped to prevent erosion, or other appropriate measures taken. Facilities for energy dissipation shall be provided where necessary.

#### 8.6.6 Additional Improvements and Requirements:

- A. Erosion Control: An erosion control plan shall be prepared by a professional engineer, licensed in the State of Maine, and designed in accordance with the standards of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, March 1991. Procedures shall be undertaken, both during preparatory, construction, and cleanup stages, to prevent soil erosion and water pollution.
- B. Cleanup: Following street construction, the developer or contractor shall conduct a thorough cleanup of stumps and other debris from the entire road or street right-of-way. Each catch basin or manhole shall be cleaned of all accumulation of silt and debris and kept clean.

- C. Street Name, Street Signs, Street Lights: Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the Town, and shall be subject to the approval of the applicable review board. Street name signs and directional signs shall be shown on plans and shall be furnished by the developer. The type, size and location shall be subject to the approval by the Reviewing Board. Street lighting shall be installed as required by the Planning Board or Site Plan Review Board per the applicable plan review and shall be consistent with the Town's street lighting standards.
- D. Utilities, where available, shall be installed prior to the street construction phase so as to avoid re-excavation of the finished street.

#### 8.7 PERFORMANCE GUARANTEE -

- A. Purpose - Performance guarantees shall be provided to ensure the proper installation of required street, utility, storm drainage and other improvements.
- B. Submission of Performance Guarantee - Prior to plan approval per the applicable reviewing Board under Section 8.4.1 the applicant shall submit a performance guarantee for an amount adequate to cover the total construction costs of all required improvements. The guarantee shall contain a construction schedule, cost estimates for each phase of construction, provisions for inspections of the construction, provisions for method of release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

The performance guarantee which is submitted for the Board's approval shall first be reviewed and accepted by the Town Manager. The following types of guarantee are acceptable methods:

- 1) Certified check payable to the Town for the establishment of an escrow account, but only if the total construction costs are \$5,000 or less.
- 2) Savings account, naming the Town as owner, to be established as an escrow account.
- 3) Performance bond payable to the Town issued by a surety company.
- 4) An irrevocable letter of credit from a financial institution which establishes funding for the construction of the required improvements, and from which the Town may draw upon if the construction is not completed in conformance with the approved plan.

- 5) A condition of approval requiring 1) that within one (1) year of the date of final plan approval, the developer shall submit to the reviewing Board a performance guarantee that covers the total cost of all required improvements and conforms to the format of 8.7.B.1, 2, 3 or 4 above; and 2) that no conveyance of lots, site disturbance or development and/or issuance of building permits shall occur until such performance guarantee is submitted to and approved by the reviewing Board. A note shall be placed on the final plans listing this condition.
- C. Phasing of Development - The Planning Board or Site Plan Review Board may approve plans to develop a major development in separate and distinct phases. This may be accomplished by limiting final approval to those lots, commercial or industrial buildings, abutting that section of the proposed road which is covered by a performance guarantee. When development is phased, road construction shall commence from the public way. Final approval of subsequent phases shall be given only after determining that there has been substantial completion of requirements pertaining to the first and/or previous phase(s) of development.
- D. Inspection of Required Improvements - No street construction shall be initiated until the required inspection fee has been submitted to the Town to cover the costs of having each construction stage inspected by the Town's inspection agent (engineer) per the Town's inspection schedule.
- E. Release of Guarantee - Prior to the release of any part of the performance guarantee, the applicable Reviewing Board shall determine to its satisfaction, in part upon the inspection report of the Town's Engineer, that the site improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.
- F. Default - If, upon inspection, the Town's Engineer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he shall so report in writing to the Code Enforcement Officer, the Municipal Officers, the Reviewing Board and the developer or builder. The Municipal Officers shall take any steps necessary to preserve the Town's rights.
- G. Assignment or Transfer - No assignment or transfer of rights to construct the project is valid without prior approval, by the applicable Reviewing Board, of a new performance guarantee to ensure that any assignee or transferee has the financial and technical capacity to complete the project. Should a previously approved performance guarantee become invalid for any reason, the plan approval shall be nullified until such time as a new performance guarantee is approved in the same manner as was originally approved.

8.8 VARIANCES AND WAIVERS:

1. The Planning Board or Site Plan Review Board may, as part of their review and approval of a plan, vary/waive certain street design and construction standards in conformance with the variance/waiver provisions of Article 13 of the Subdivision Review Regulations or Article 11, Section 9 of the Zoning Ordinance, as applicable. Such variances/waivers shall not assure eligibility for the petitioning or acceptance of such street as a Town Way.
2. Any variance/waiver of the provisions of this ordinance which is part of a petition for acceptance of street as a Town Way shall be decided by the Board of Selectmen and shall conform to the standards of Section 8.8.2.A and 2.B below.
  - A. Where extraordinary and unnecessary hardships would result, or due to the special circumstances of the site, certain requirements of this ordinance may be varied or waived by the Board of Selectmen based upon the following criteria:
    - 1) The requested variance/waiver shall have been previously reviewed and approved by the Planning Board (if the street is part of a subdivision plan review) or by the requested variance/waiver upon: the safe functioning of the street, the long term costs of maintaining the street, and the Town's ability to provide public services along the street.
    - 2) The required thickness of pavement shall not be reduced, and
    - 3) A report from the Town's Public Services Director and Town's Consulting Engineer concerning the expected performance of the street (per the criteria listed in subsection A.1. above) if the variance/waiver is granted.
  - B. In granting such variances/waivers, the Board of Selectmen shall require such conditions, as will, in its judgment secure the objectives of Section 8.2 of these standards and of the requirement(s) so varied or waived.

8.9 APPEAL: Any person aggrieved by a decision or failure to act of the Board of Selectmen, Planning Board or Site Plan Review Board, pursuant to this ordinance, may appeal to York County Superior Court within 30 days of such decision or refusal to issue a decision.

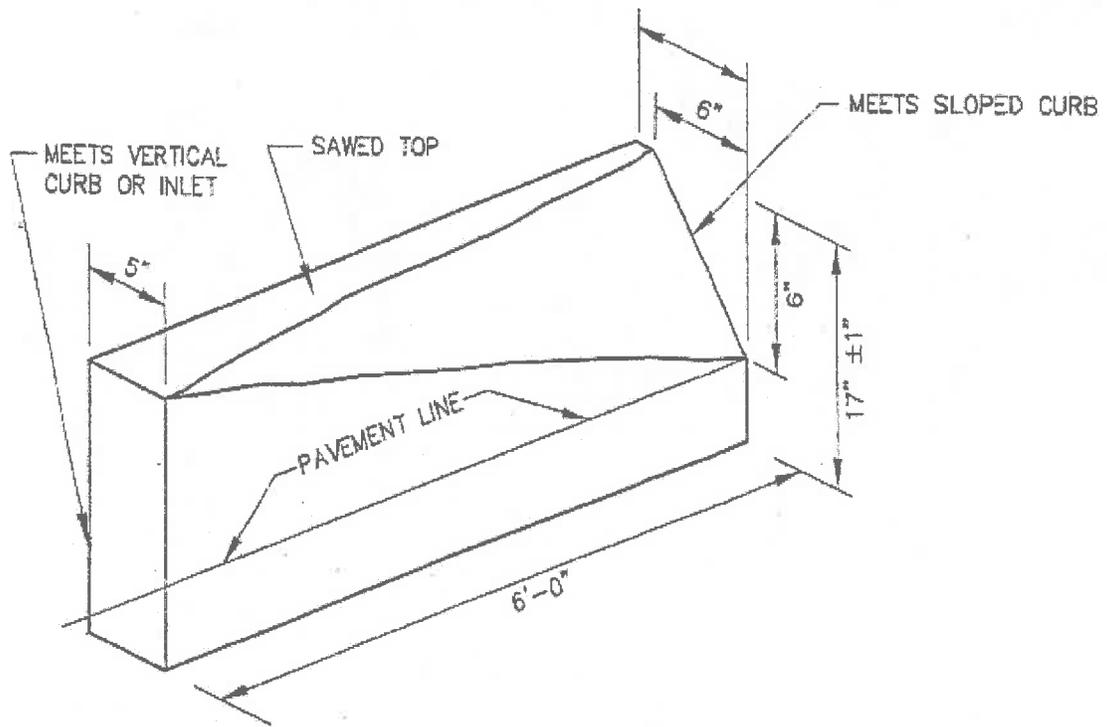
8.10 SEVERABILITY: The invalidity of any section or provision of this ordinance shall not be held to invalidate any other section or provision of this ordinance.

8.11 REPEAL: All provisions of the Street Design and Construction Standards Ordinance, 1977, as amended 1988, and of the street standards of the Planning Board

Standards for Reviewing Land Subdivisions, 1977, as amended, and of other prior ordinances of the Town that are inconsistent with this ordinance are hereby repealed.

8.12 EFFECTIVE DATE: This ordinance shall take effect immediately upon adoption of the same by a Town Meeting

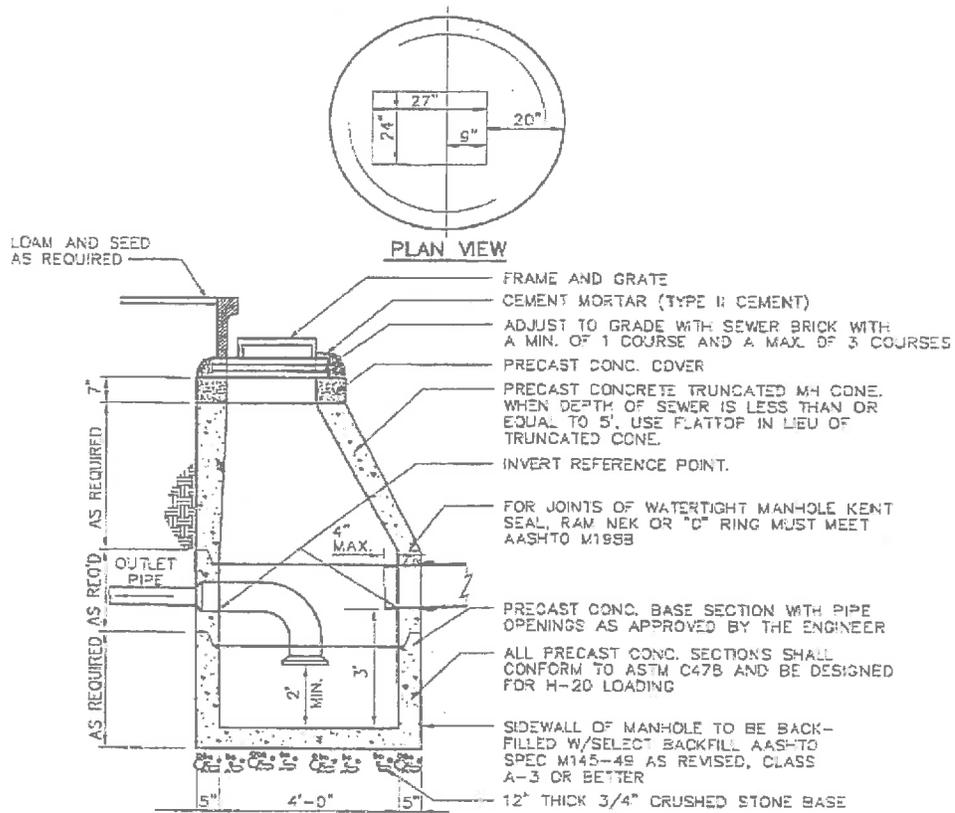
ADOPTED 06-09-1993; AMENDED 11-14-2001; AMENDED 06-21-2011



TRANSITION SECTION - VERTICAL TO SLOPED CURB  
VERTICAL TO SLOPED CURB TRANSITION STONES  
 N.T.S.

DET887.DWG

**A-1**

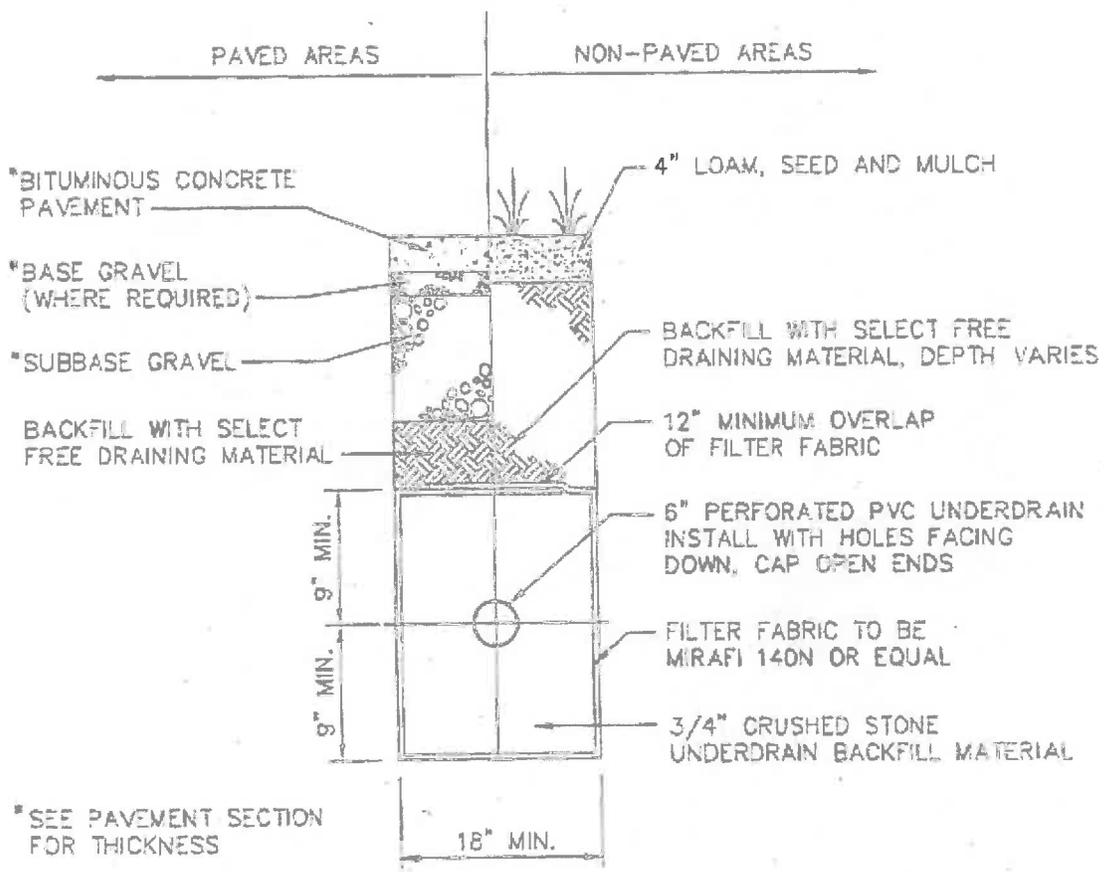


**4'-0" PRECAST CATCH BASIN  
 WITH CURB INLET**

DETS07.DWG

**A-2**



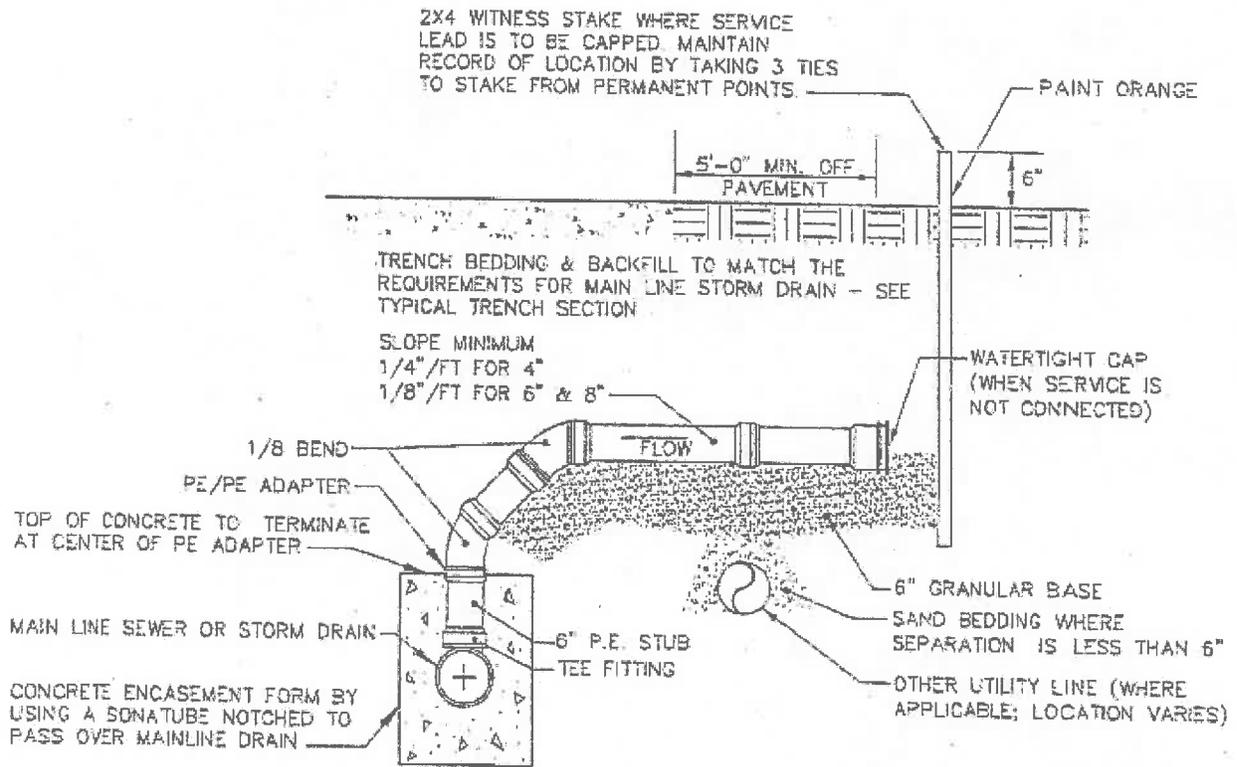


## TYPICAL UNDERDRAIN TRENCH SECTION

N.T.S.

DET543.DWG

A-4

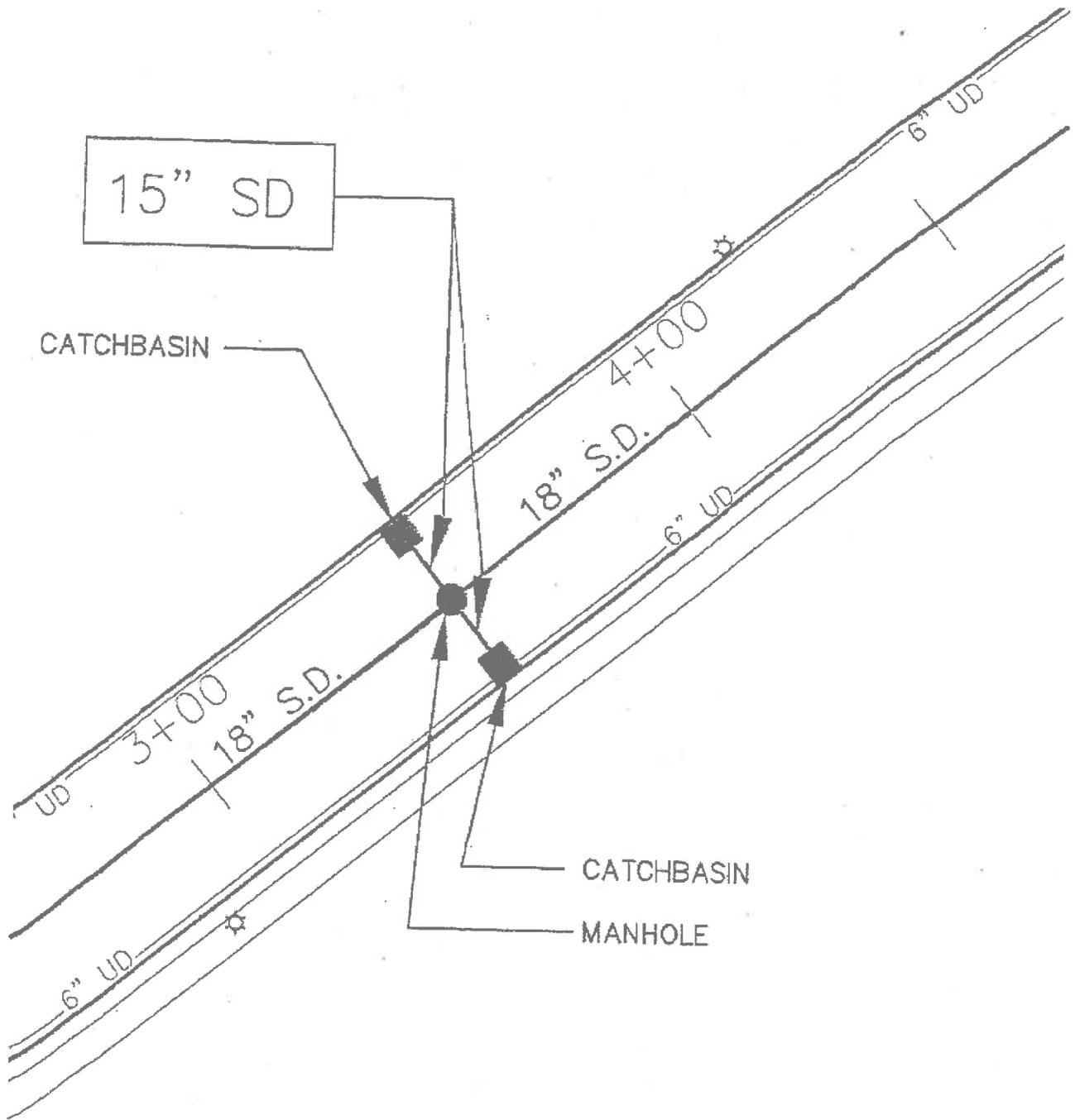


NOTE:  
 ALL SERVICE LEADS TO BE TYPE 1 OR 2 UNLESS OTHERWISE DIRECTED BY THE ENGINEER IN THE FIELD.

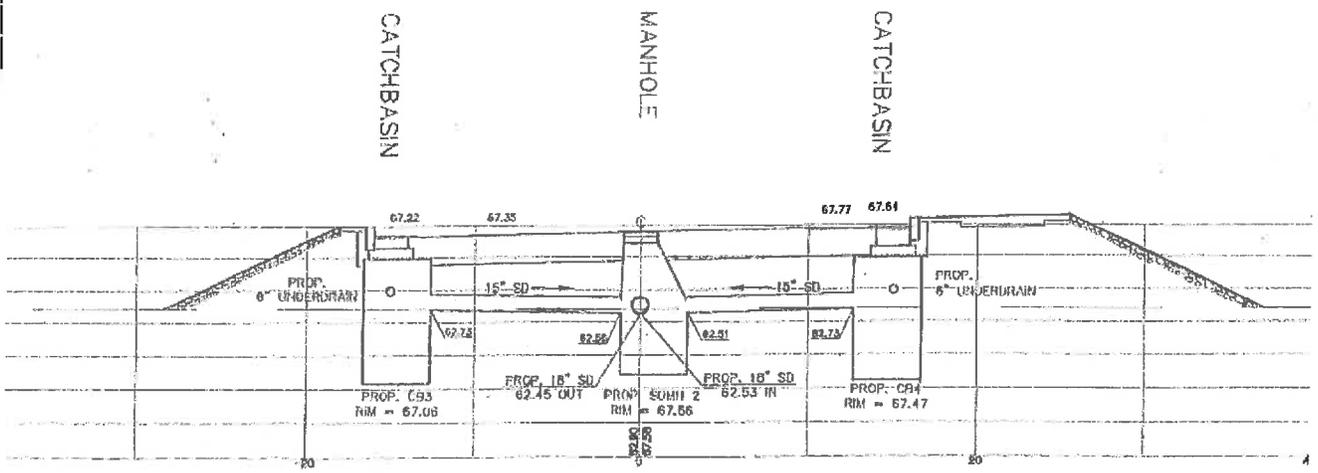
### TYPE 3 SERVICE LEAD (WITH CHIMNEY)

N.T.S.

DET417.DWG



A-6



A-7

**DESIGN STANDARDS  
TABLE A**

Minimum Widths	Collector		Minor		Local		Arterial, Commercial, Industrial
	Rural	Growth	Rural	Growth	Paved	Unpaved	
R.O.W. <sup>1</sup>	50'	50'	50'	50'	50'	50'	60'
Travel Way (pavement width)	22'	24' (28' curbed 1 side) (32' curbed 2 sides)	20'	22' (24' curbed)	18'	18' unpaved	24' (28' curbed 1 side) (32' curbed 2 sides)
Shoulder (each side)	4'	4'	3'	3'	2'	2'	4'
Sidewalk (paved)	5'	5'	5'	5'			5'
Green Strip	4'	4'	4'	4'			4'
Min. Grade	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
Max. Grade <sup>2</sup>	6.0%	6.0%	8.0%	8.0%	8.0%	8.0%	6.0%
Minimum Centerline Radius	230'	230'	150'	150'	150'	150'	230'
Min. tangent B <sup>3</sup> reverse curves	200'	200'	100'	100'	100'	100'	200'
Roadway Crown	1/4" /ft.	1/4" /ft.	1/4" /ft.	1/4" /ft.	1/4" /ft.		1/4" /ft.
Shoulder Slope	1/2" /ft.	1/2" /ft.	1/2" /ft.	1/2" /ft.	1/2" /ft.		1/2" /ft.
Street Intersection:							
Min. Angle <sup>3</sup>	90°	90°	90°	90°	90°	90°	90°
Max. Grade w/75'	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Min. Curb Radii <sup>4</sup>	20'	20'	20'	20'	20'	n/a	25'
Dead-Ends/Cul-de-sac:						T-Turn Allowed	
Max. Length	2500'	2500'	2500'	2500'	1500'	n/a	
Turnaround Radii:							
Prop. Line	60'	60'	60'	60'	60'	n/a	
Outer Pavement	50'	50'	50'	50'	50'	n/a	
Inner Pavement	30'	30'	30'	30'	30'	n/a	
Fire Suppression: <sup>5</sup>	Hydrants shall be located with a spacing of no more than 500 feet						Hydrants every 250'

1. A sixty (60) foot right-of-way shall be provided when six (6) or more feet of cut and fill is otherwise required to meet these standards.
2. Maximum grade may be exceeded by two (2) percent for a length of one hundred (100) feet or less.
3. Upon determination by the reviewing board, some variance is allowed; however, in no case less than seventy five (75°).
4. May be reduced by the reviewing board upon a finding that both vehicular and pedestrian safety will be maintained.
5. Except as may be varied through plan review and approval by the applicable Reviewing Board.

## **SECTION 8 – STREET AND SIDEWALK EXCAVATION ORDINANCE**

### **Section 1: Permit Required**

It shall be unlawful for any person, firm or corporation to tunnel under or to make any excavation in any street, alley, sidewalk or other public place in the Town without having first obtained a permit as herein required; or without complying with the provisions of this Ordinance; or in violation of or variance from the terms of any such permit.

### **Section 2: Applications**

Applications for such permits, accompanied by an application fee as set by the Board of Selectmen's fee schedule, shall be obtained from the Town Clerk and shall describe the location of the intended excavation or tunnel; the size thereof; the purpose therefore; the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for whom or which the work is being done; and shall contain an agreement that the applicant will comply with all ordinances, rules, regulations, statutes and other laws relating to the work to be done.

The permit application shall be presented to the Public Services Director or his designee for approval no less than 48 hours prior to the proposed excavation, except in emergency situations as hereinafter provided. Notation of approval by the Public Services Director or his designee on the body of the application shall be a prerequisite to its submission to the Board of Selectmen or Town Manager. The Board of Selectmen or Town Manager shall review all excavation applications presented and approve excavation permits pursuant to this Ordinance for all proposed projects satisfying the requirements of the Ordinance, subject to such additional conditions as this Ordinance allows and as the Selectmen or Town Manager deem necessary, desirable or appropriate. After said permit application is approved by the Public Services Director and the Board of Selectmen or Town Manager, the permit shall be issued by the Town Clerk.

### **Section 3: Bond**

No such permit shall be issued unless and until the applicant has filed with the Town Clerk a performance bond in accordance with the following schedule (Fees as set by the Board of Selectmen):

- a) \$1,000 for crosscut openings;
- b) \$5,000 for parallel openings not exceeding five hundred (500) feet in length; or
- c) \$10 per foot for parallel openings in excess of five hundred (500) feet in length.

Such bond shall have as surety a corporation licensed to do business in the State of Maine as a surety company, and shall extend for a term of at least two years after completion of the

project. An equivalent amount of cash or certified funds payable to the Town may be deposited for the same purpose in lieu of the surety bond by this section.

The Selectmen may, in their absolute discretion, require surety in an amount greater than those set forth in the preceding schedule or for a term in excess of two years in projects where they determine that the project, because of its nature, magnitude, or for any other reason, warrants such additional security.

Notwithstanding any of the above requirements the Board of Selectmen is hereby given the authority to allow utility companies, in lieu of posting any other surety or performance bond required by this section, to instead post an annual bond of \$15,000 for the purposes set forth in this section.

Applicants other than utility companies may post an aggregate bond once a year to secure a designated number of cuts during that year. The terms of that bond and per-cut amount shall be as provided herein for single-cut bonds. Any portion of such an aggregate bond not used within the calendar year of the year it was posted may not, without approval of the Board of Selectmen, be carried over to the following year. (12-12-86; 06-21-2011)

#### **Section 4: Insurance**

No such permit shall be issued unless and until a certificate or other proof is filed showing that the applicant carries public liability insurance with coverage limits deemed by the Selectmen to be sufficient to provide adequate protection to the Town, its citizens and the general public.

#### **Section 5: Manner of Excavating**

It shall be unlawful to make such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the municipal department or officer charged with the care thereof, which are or may be injured or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed.

No unnecessary damage or injuries shall be done to any tree or shrub or the root thereof.

#### **Section 6: Sidewalks**

If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users. The temporary sidewalk is

subject to inspection by the Public Services Director, and shall not be open for use until approved by him.

### **Section 7: Restoring Surface**

Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the Town shall restore the surface to its original condition if there is no pavement there. Backfilled material shall be properly compacted down.

Any opening in a paved or improved portion of a street shall be repaired and the surface replaced by the applicant, in compliance with the Ordinances of the Town, including this Ordinance, and under the supervision of the Public Services Director.

### **Section 8: Surfacing Materials**

**8.1** Parallel or Diagonal street openings in excess of ten feet in width or twenty feet in length; also Cross or Right Angle openings in excess of twenty feet in width (Amended 04-22-85): The hot topping for these openings shall consist of 2 1/2 inches of binder or base mix, or thickness equivalent to the existing pavement, whichever is greater, confined within the limit of the opening. The full width of the paved street or sidewalk to a point 20 feet beyond the end of the opening and 20 feet prior to the beginning of the opening will be overlaid with not less than 1 inch of the surface mix.

**8.2** Cross or Right Angle street openings twenty feet or less in width: The hot topping for these openings shall consist of 2 1/2 inches of binder or base mix, or thickness equal to the existing pavement, whichever is greater, confined within the opening limits, plus 1 inch of surface mix raised slightly above the existing street or sidewalk surface to allow for settling. Openings wider than 20 feet will fall within the preceding paragraph, and resurfacing of those openings shall comply with those provisions.

All hot top paving contractors shall be approved in writing by the Public Services Director prior to beginning work.

All hot top paving shall be completed within 14 days following the final day of backfill.

### **Section 9: Supervision**

The Public Services Director shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the Town to see to the enforcement of the provisions of this Ordinance. Notice shall be given to him at least 10 hours before the work of refilling any such tunnel or excavation commences.

## **Section 10: Protective Measures & Routing of Traffic**

It shall be the duty of every person, firm or corporation cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for the safety of the general public. The Selectmen may restrict the use of lanterns or open flame devices in fire hazard areas.

The permittee shall take appropriate measures to assure that during the performance of excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

When traffic conditions permit, the Selectmen may, by written approval, permit the closing of streets and alleys to all traffic for a period of time prescribed by them, if in their opinion that is necessary. Such written approval may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given.

Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the Public Services Director.

## **Section 11: Relocation and Protection of Utilities**

The permittee shall not interfere with any existing facility without the written consent of the Selectmen and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owners thereof, All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this paragraph that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

## **Section 12: Abandonment of Substructures**

Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein, shall within 30 days after such abandonment file with the Public Services Director a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned substructure is in the way, or subsequently becomes in the way, of an installation of the Town or any other public body, which installation is pursuant to a governmental function, the owners shall remove such abandoned substructures or pay the cost of its removal during the course of excavation or construction of the facility by the Town or any other public body.

## **Section 13: Protection of Adjoining Property**

The permittee shall at all times and at his or its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain consent from the owner of such private property for such purpose. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area said area shall be reseeded or the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required by this Ordinance. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any trees or shrubs which exist in parking strip areas without first obtaining the consent of the appropriate Town department or Town official having supervision of such property.

## **Section 14: Placement of Excavated Material**

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled, and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the Selectmen shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

## **Section 15: Clean Up**

As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Public Services Director. From time to time, as may be ordered by the Public Services Director and in any event immediately after completion of said work, the permittee shall, at his or its own expense, clean up and remove all refuse and unused materials of any kind resulting from said work, and upon failure to do so within twenty-four hours after having been notified to do so by the Public Services Director, said work may be done by the Public Services Director and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

## **Section 16: Protection of Watercourses**

The permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all time maintained.

The permittee shall make provisions to take care of all surplus water, muck, silt, slickings, or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

## **Section 17: Breaking Through Pavement**

- 1) Pavement will, as a general rule, be cut only with pavement breaker blades or pavement saws. The Selectmen, Public Services Director or Town Manager may, if they feel a particular project justifies it, authorize the use of different equipment in specific cases.
- 2) Heavy duty pavement breakers may be prohibited by the Selectmen when the use endangers existing substructures or other property.
- 3) Saw cutting of Portland cement concrete may be required when the nature of the work or the condition of the street warrants. When required, the depth of the cut shall be not less than one inch. Depths greater than one inch may be required by the Public Services Director when circumstances warrant. Saw cutting may be required by the Public Services Director outside of the limits of the excavation over cave-outs, over-breaks and small floating sections.
- 4) Approved cutting of bituminous pavement surface ahead of excavations may be required by the Public Services Director to confine pavement damage to the limits of the trench.

- 5) Sections of sidewalks shall be removed to the nearest score line or joint.
- 6) Unstable pavement shall be removed over cave-outs and over-breaks and the subgrade shall be treated as the main trench.
- 7) Pavement edges shall be trimmed to a vertical face and neatly aligned with the centerline of the trench.
- 8) Cutouts outside of the trench lines must be normal or parallel to the trench line.
- 9) Boring or other methods to prevent cutting of new pavement may be required by the Public Services Director.
- 10) Permittee shall not be required to repair pavement damage existing prior to excavation unless his cut results in small floating sections that may be unstable, in which case permittee shall remove and pave the area.

### **Section 18: Backfilling**

Fine material, free from lumps and stone, selected from the spoil shall be thoroughly compacted around and under the substructure to the upper level of such substructure. Above the upper level of the substructure, backfill material shall be placed to the subgrade of the pavement in lifts consistent with the type of soil involved and the degree of consolidation specified by the Public Services Director. Broken pavement, large stones over three inches in diameter, roots and other debris and peat-type material shall not be used in the backfill. The backfill material will be placed in one foot lifts with each lift compacted with compaction equipment approved by the Public Services Director. The last eighteen inches of backfill material will be placed in three six-inch lifts. Each lift being compacted with the same approved equipment used on the lower layers. Backfilled material is generally required to be 95% compacted. Exceptions to this rule may be made by the Public Services Director when, in his judgment, this is warranted by the nature of a specific project. Such backfill shall be done in a manner that will permit the restoration of the surface to a density condition not less than that existing prior to excavation unless otherwise specified. The Public Services Director may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in his opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Selectmen. All expense of such tests shall be borne by the permittee.

### **Section 19: Prompt Completion of Work**

After an excavation is commenced, the permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be so as not to obstruct the public place or travel thereon more than is reasonable necessary.

## **Section 20: Urgent Work**

When traffic conditions, the safety or convenience of the traveling public or public interest require that the excavation work be performed as emergency work the Selectmen shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty-four hours a day to the end that such excavation work may be completed as soon as possible.

## **Section 21: Emergency Action**

Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary in emergency situations for the preservation of life or property, provided that the person making such excavation shall apply for such a permit on the first working day after such work is commenced.

## **Section 22: Noise, Dust and Debris**

Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 8 PM and 7 AM shall not use, except in case of emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

## **Section 23: Preservation of Monuments**

Any monument set for the purpose of locating or preserving the lines of any street or subdivision, or a precise survey reference point, or a permanent survey bench mark within the Town, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the Selectmen to do so. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Town.

## **Section 24: Inspections**

The Public Services Director shall make such inspections as are reasonably necessary in the enforcement of this Ordinance.

## **Section 25: Winter Permits**

No permits will be issued between December 1 of any one year and March 15 of the following year except when, in the judgment of the Board of Selectmen and the Public Services Director, a situation of extreme emergency exists.

**Section 26: Conflict with Other Enactments**

When this ordinance is in conflict with any other ordinance, rules or regulations of the Town of Kennebunk, the provisions of the ordinance, rules or regulations, which impose the greater restriction, shall prevail.

**Section 27: Penalty**

Any person, firm or corporation violating any of the provisions of this ordinance shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. All fines collected hereunder shall inure to the Town.

**Section 28: Fees**

Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED 09-17-1984; AMENDED 06-12-2002; 06-21-2011

**SECTION 9**

**ORDINANCE RELATING TO HAZARDOUS MATERIALS  
HAS BEEN RESCINDED**

{SEE TOWN MEETING VOTE 6/11/96}

## Town of Kennebunk Ordinance Fee Schedule

Ordinance	Section	Title/Subject	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense
2-1		<b>Prohibited Parking</b>			
	2-1.1 A	Beach Area	\$20.00	\$40.00	\$100.00
	2-1.1 B	Beach Avenue	\$20.00	\$40.00	\$100.00
	2-1.1. Ba	Beach Avenue	\$20.00	\$40.00	\$100.00
	2-1.1 O	Lords Point Road	\$20.00	\$40.00	\$100.00
	2-1.1 DD	Western Avenue-Opposite Rotary Park	\$20.00	\$40.00	\$100.00
	2-1.4	Fines	\$20.00	\$40.00	\$100.00
2-2		<b>Limited Parking</b>			
	2-2.1 A	Beach Avenue	\$20.00	\$40.00	\$100.00
	2-2.4	Fines	\$20.00	\$40.00	\$100.00
2-3		<b>One-Way and Prohibited Traffic</b>			
	2-3.4	Devonshire Lane/Fines	\$20.00	\$40.00	\$100.00
	2-3.5.3	Fines	\$20.00	\$40.00	\$100.00
2-4		<b>Limited or Prohibited Conveyances</b>			
	2-4.1	Fines	\$20.00	\$40.00	\$100.00
		<b>Skateboard Ordinance</b>			
	2-4.2.3.4	Fines	\$20.00	\$40.00	\$100.00
2.4.5		<b>Bicycle Cabs Ordinance</b>			
		Application Fee: \$50.00			
	2-4.5.11	Fines	\$20.00	\$40.00	\$100.00
2.5		<b>Beach Parking Permits</b>			
	2-5.3	Residents/Taxpayers: 1 <sup>st</sup> : \$2.00, 2 <sup>nd</sup> : \$5.00, 3 <sup>rd</sup> : \$5.00			
	2-5.4	Guest Parking Permits: \$20.00 each Motels & Hotels: \$20.00 each			
	2-5.5	Non-Residents: 1 Day Permit: \$20.00 each Non-Residents: 1 Week Permit: \$75.00 each Non-Residents: 1 Full Season Permit: \$150.00 each			
	2-5.6	Replacement Fee: 1 <sup>st</sup> : Free, Add'l: \$5.00			
		Fines	Per KPD Ticket		
2.6		<b>Parking Related to Winter Snow Plowing/Removal</b>			
	2-6.1	Fines	\$20.00	\$40.00	\$100.00
2.7		<b>Commercial Traffic Regulation on Town Ways</b>			
	2-7.6	Fines	\$20.00	\$40.00	\$100.00
2.8		<b>Kennebunk River Passage Ordinance</b>			
2.9		<b>Sidewalk Parking Ordinance</b>			
		Fines	\$20.00	\$40.00	\$100.00
2.10		<b>Kennebunk Harbor Ordinance</b>			
	2-10.2	Mooring Fee (Resident): \$150.00 Mooring Fee (Non-Resident): \$150.00 Mooring Waiting List Fee: \$15.00			
	2-10.6	Fines	\$20.00	\$40.00	\$100.00
2.11		<b>Fire Hydrants/Parking</b>			
	2-11.1	Fines	\$20.00	\$40.00	\$100.00

Ordinance	Section	Title/Subject	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense
2-12		Unpaid Parking Fines Penalty			
	2-12.1	Fines/Not paid within 21 days	\$20.00	\$40.00	\$100.00
	2-12.2	Fines/Impound Fee: \$40.00 + \$5.00/day			
	2-12.2	Fines/Obstructing Removal	\$20.00	\$40.00	\$100.00
2-13		Engine Breaking Ordinance			
	2-13.2	Fines	\$20.00	\$40.00	\$100.00
3-1		Water Closets-Deleted 6/11/2003			
3-2		Rubbish			
	3-2.1	Fines/Household waste littering public way	\$20.00	\$40.00	\$100.00
	3-2.2	Fines/Failure to cover rubbish	\$20.00	\$40.00	\$100.00
	3-2.3	Fines/Littering near waterways	\$20.00	\$40.00	\$100.00
	3-2.4	Fines/Littering in public ways	\$20.00	\$40.00	\$100.00
3-3		Municipal Dump-Deleted 6/21/2011			
3-4		Dogs			
	3-4.1	Fines/Roaming at large	\$20.00	\$40.00	\$100.00
	3-4.2	Fines/Habitual Barking	\$20.00	\$40.00	\$100.00
	3-4.3 C	Fines/Failure to remove and dispose of feces	\$20.00	\$40.00	\$100.00
3-5		Public Beaches			
	3-5 IV.9	Fines: General rules	\$20.00	\$40.00	\$100.00
	3-5 VI	Fines: All other rules	\$20.00	\$40.00	\$100.00
3-6		Public Conduct			
	3-6.4	Fines			
3-7		Firearm Discharge Ordinance			
	3-7.6	Fines	\$100.00	\$250.00	\$400.00
3-8		Concealed Weapon Permit Application Fee			
	3-8.1	Original Application: \$35.00			
		Renewal Application: \$20.00			
		Duplicate: \$2.00			
		Fines	\$20.00	\$40.00	\$100.00
3-9		Out-of-Door Burning			
	3-9.7	Fines	\$20.00	\$40.00	\$100.00
3-10		Septage Effluent			
			\$50.00	\$100.00	\$150.00
3-11		Police/Fire Alarms			
	3-11.3	Fees: \$25.00			
	3-11.7	Fines: (the first 3 alarms are waived)	4 <sup>th</sup> Offense \$100.00	5 <sup>th</sup> Offense \$200.00	6 <sup>th</sup> Offense \$300.00
3-12		Smoke Detector Ordinance			
	3-12.7	Fines	\$20.00	\$40.00	\$100.00
3-13		Overboard Discharge Ordinance			
	3-13.6	Fines	\$50.00	\$100.00	\$150.00
3-14		Solid Waste & Pay As You Throw Ordinance			
	3-14 X 2	Application Fee: \$100.00			
	3-14 X 7	License Fee: Vehicle-\$25.00			
		License Fee: Applicant-\$50.00			
3-15		Solid Waste Facilities Prohibition			
3-16		Solid Waste Disposal Fees			
3-17		Offenses Against Public Property			
	3-17.3	Fines	\$100.00	\$250.00	\$350.00
	3-17.4	Waiver fees	\$25.00	\$75.00	\$100.00+ damages

Ordinance	Section	Title/Subject	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense
3-18		Use of Permit Fees for Non-Residential Projects			
3-19		Noise Control Ordinance			
4-1		Amateur Sports- Deleted June 2003			
4-2		Centennial Plot			
4-3		Wiggin's Pond Regulations			
	4-3.0	Fines	\$20.00	\$40.00	\$100.00
4-4		Placing Stock in Trade on Sidewalks			
4-5		Floodplain Management Ordinance			
	4-5 IV	Application Fee: \$1.00 per \$1,000.00 of construction costs			
4-6		Street Address Ordinance			
4-7		Property Tax Assistance Ordinance			
4-8		Tree Ordinance			
6-1		Peddlers and Door-to-Door Solicitation			
	6-1.3.2	Fee: \$50.00			
		<b>Mobile Vendor for the Waterhouse Center</b> (annual fee): \$50 application fee (non-refundable), \$800 vending license, \$150 Victualer license if not already licensed			
6-2		Ordinance Prohibiting Street Vending Within the Coastal Residential District			
	6-2.4	Fines	\$50.00	\$100.00	\$150.00
6-3		Victualer & Lodging Licenses			
	6-3.4	Fee: \$150.00			
	6-3.7	Fines	\$50.00	\$100.00	\$200.00
	6-3.9	Special Event Fees: 1-2 days: \$10/day (Kennebunk Business)			
		Special Event Fees: 3-30 days: \$25 (Kennebunk Business)			
		Special Event Fees for Non-Kennebunk Business: \$40.00			
	6-3.11	Outdoor Dining Permit Fee: \$25.00			
6-4		Wrecker/Towing Services			
6-5		Mass Gatherings			
	6-5.1	Filing Fee: \$150.00			
6-6		Special Amusement Permits			
	6-6.4	Fee: \$75.00			
	6-6.9	Fines	\$75.00	\$150.00	\$300.00
6-7		Pin Ball Machines and Other Arcade Games			
	6-7.2	Fee: \$75.00			
6-8		Cable Television			
	6-8.3	Fee: \$150.00			
6-9		Demolition Wastes Disposal Ordinance			
	6-9.4	Fee: \$20.00/6 cubic yards			
		Fines	\$20.00	\$40.00	\$100.00
6-10		Shellfish Conservation Ordinance			
	6-10.5 C	Resident Fees: \$20.00			
		Non-Resident Fees: \$40.00			
	6-10.5 K	Penalty per M.R.S.A Section 6671 (10)	\$100.00	\$300.00	\$500.00
8-1		Street Design and Construction Standards Ordinance			
8-2		Street and Sidewalk Excavation Ordinance			
	8-2.2	Fees: \$50.00			
	8-2.27	Fines	\$100.00	\$250.00	\$400.00

Approved 6/10/2014