



## Joint Committee of the Planning Board & Planning, Licenses, & Development Committee

### AGENDA

**November 16, 2020 at 6:30 PM**

This meeting will be conducted remotely.\* The public may access this meeting by using the options provided in the box on the right side of this agenda.

#### 1. Statement of Authority to Hold Remote Meeting

#### 2. Call to Order & Roll Call

#### 3. Continued Public Workshop

**Ordinances O-2020-10 & O-2020-11** – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (*Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus*); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts.

The full text of the ordinances and the proposed Land Development Code is available at [www.keenebuildingbetter.com/lcd](http://www.keenebuildingbetter.com/lcd), or by appointment at City Hall. To make an appointment, email [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us) or call (603) 352-5440.

- a. Review of Public Workshop Schedule
- b. Review of Articles 10 through 18 of the proposed City of Keene Land Development Code
- c. Public Comment

#### 4. Next Meeting – Monday, December 14, 2020

#### 5. Adjourn

#### OPTIONS FOR ACCESSING THIS MEETING:

- To participate online:
  - Go to [www.zoom.us/join](http://www.zoom.us/join)
  - Enter Meeting ID - 893 8296 4232
- To participate by telephone:
  - Call (646) 558-8656 or (888) 475-4499 (*toll-free*)
  - Enter Meeting ID - 893 8296 4232
- **Technical Issues:** If you encounter issues accessing this meeting call (603) 209-4697 during the meeting.
- **Meeting Information** (including agendas and minutes) will be available on the Joint Committee webpage at: [ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee](http://ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee).
- If you have concerns related to accessing/participating in this or future public workshops, please contact City staff at 603-352-5440 or via email at: [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us)
- **Written comments** on the ordinances may be emailed in advance of the meeting to: [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us) or mailed to: City Hall, 3 Washington St, 4<sup>th</sup> Floor, Keene, NH 03431.
- **Cheshire TV** will broadcast this meeting live on Channel 1302.

\*In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.

## ORDINANCE REVIEW & ADOPTION PROCESS / SCHEDULE

### - Ordinances O-2020-10 & O-2020-11 -

Relating to the Establishment of a Land Development Code and Changes to the City's Downtown Zoning Districts

Full text of the ordinances and proposed Land Development Code is available at: [www.keenebuildingbetter.com](http://www.keenebuildingbetter.com).

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#### I. Ordinance Introduced to City Council

On October 15, 2020, Ordinances O-2020-10 & O-2020-11 were introduced to City Council for a 1<sup>st</sup> reading and referred to the City Council's Planning, Licenses and Development Committee (PLD) and the Joint Committee of the Planning Board and PLD for a public workshop.

#### II. Joint Committee Public Workshops

The public workshop is not a due process public hearing. It is a process for the City Council's PLD Committee and the Planning board to review, receive public comment and make appropriate changes to the proposed ordinance(s) prior to a public hearing held by the City Council.

Public notice in the Sentinel of the first public workshop is required; however, no additional public notice will be provided prior to the conclusion of the workshop process. Notice of the first public workshop has been mailed to all property owners in the City.

The public may go to the Joint Committee webpage to view agendas for upcoming meetings and minutes from prior meetings: [ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee](http://ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee)

##### *Anticipated Schedule of Public Workshops\*:*

- **November 9, 2019** (Monday) at 6:30 pm - *Topics: Articles 1 through 9 of the proposed Land Development Code*
- **November 16, 2019** (Monday) at 6:30 pm - *Topics: Articles 10 through 18 of the proposed Land Development Code*
- **December 14, 2019** (Monday) at 6:30 pm - *This workshop is scheduled to be an In-Person Listening Session. As an alternative, it could be used as time to review additional material.*
- **January 11, 2021** (Monday) at 6:30 pm - *Topics: Articles 19 through 22*
- **January 19, 2021** (Tuesday) at 6:30 pm - *Topics: Article 23 through 28*
- **February 8, 2021** (Monday) at 6:30 pm - *This workshop is scheduled to be an In-Person Listening Session. As an alternative, it could be used as time to review additional material.*
- **March 8, 2021** (Monday) at 6:30 pm - *Final discussion / vote on ordinances*

*\*This proposed schedule is the number of workshops recommended by City staff. The Joint Committee may choose to hold additional or fewer workshops, which would alter the schedule listed above.*

### **III. Historic District Public Hearing**

Following the public workshop phase, the Historic District shall hold a public hearing on the proposed changes to the Historic District Regulations (Article 21 of the proposed Land Development Code), and associated application and review procedures in Article 25. The Historic District may choose to continue the public hearing to multiple meetings. The first meeting of the public hearing will be noticed in the Sentinel. All meeting notices, agendas, and minutes will be available on the Historic District Commission webpage at: [ci.keene.nh.us/historic-district-commission](http://ci.keene.nh.us/historic-district-commission)

- This public hearing is tentatively scheduled for **March 17, 2021** (Wednesday) at 4:30 pm

### **IV. Planning Board Public Hearing**

Following the public workshop phase, the Planning Board shall hold a public hearing on the proposed changes to the Site Development Standards (Article 20 of the proposed Land Development Code), Subdivision Regulations (Article 19 of the proposed Land Development Code), and associated application and review procedures in Article 25. The Planning Board may choose to continue the public hearing to multiple meetings. The first meeting of the public hearing will be noticed in the Sentinel. All meeting notices, agendas, and minutes are available on the Planning Board webpage at: [ci.keene.nh.us/planning-board](http://ci.keene.nh.us/planning-board)

- This public hearing is tentatively scheduled for **March 22, 2021** (Monday) at 6:30 pm

### **V. City Council Public Hearing**

Following the conclusion of the Historic District Commission and Planning Board Public Hearings, the City Council shall hold a public hearing on the ordinances. The City Council may choose to continue the public hearing to multiple meetings. The first meeting of the public hearing will be noticed in the Sentinel and notice will be mailed to all property owners in the City.

- This public hearing is tentatively scheduled for **April 1, 2021** (Thursday) at 7:00 pm

### **VI. Planning, Licenses, and Development (PLD) Committee Recommendation for City Council on Ordinances**

Following the City Council Public Workshop, the PLD will review the ordinances at a regularly scheduled meeting. This is not a public hearing, and public comment will not be accepted at this meeting. The PLD will vote on a recommendation to City Council to either approve or deny the ordinances.

- This meeting is tentatively scheduled for **April 7, 2021** (Wednesday) at 7:00 pm

### **VII. City Council Vote on Ordinances (2<sup>nd</sup> Reading & Vote on Ordinances)**

Upon receiving a recommendation from the PLD on the ordinances, the City Council will schedule a 2<sup>nd</sup> reading of the ordinances and will vote to either approve or deny them. This is not a public hearing and public comment will not be accepted at this meeting.

- This meeting is tentatively scheduled for **April 15, 2021** (Thursday) at 7:00 pm

# ARTICLE 10. SIGNS

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**10.1 GENERAL**

**10.1.1 Purpose**

This Article is intended to establish a legal framework for a comprehensive and balanced system of signs in order to achieve the following objectives.

1. Help to allow the free flow of traffic and protect the safety of pedestrians, bicyclists and motorists, which may be impacted by cluttered, distracting or illegible signage.
2. Avoid excessive levels of visual clutter or distraction that are potentially harmful to property values, business opportunities and community appearance.
3. Promote the use of signs that are aesthetically pleasing, of appropriate scale, and integrated with the surrounding buildings and landscape.

**10.1.2 Applicability**

Unless otherwise provided in this Article, it shall be unlawful for any person to construct, erect, replace, alter, attach, or relocate within the City, any sign or sign structure, as defined herein, without first obtaining a sign permit in accordance with **Section 25.14** from the Community Development Department and demonstrating compliance with the provisions of this Article.

**10.1.3 Substitution**

The owner of any sign which is otherwise allowed under this Article may substitute any sign copy in lieu of any other sign copy, without any additional approval or permitting. This provision prevails over any more specific provision to the contrary. This provision does not create a right to increase the total amount of sign area permitted on a lot.

**10.2 EXEMPT SIGNS**

The signs listed in **Table 10-1** shall not require a sign permit, unless otherwise provided in this Article. A building permit may be required to erect such signs, even if a sign permit is not required.

**Table 10-1: Signs Exempt from Sign Permit**

Exempt Sign Types	Conditions
Signs Required by Law	-
Signs in the Public Right-of-Way	Subject to Chapter 46 of City Code of Ordinances.
Government Signs or Flags	-
Interior Merchandise Display	-
Bulletin Boards (<20 sf)	Shall be on the premises of a noncommercial organization.
Informational / Directional Sign (< 4 sf)	-
Memorial Signs & Plaques	Shall be attached to or cut into a building or masonry surface, or a plaque constructed of bronze or other incombustible material.
Political Sign	Subject to NH RSA 664:17
Restrictive Sign	As authorized by NH RSA 635:4
Sign Face Replacement	Shall be in a permitted sign cabinet. Sign permit is required if in DT-C district
Business Sign (< 4 sf)	Shall be attached or affixed to the business frontage in a covered common walkway of a shopping center.
Fuel Price Sign (< 10 sf)	-
Window Sign (< 20 sf)	When affixed outside of a window, the total sign area shall be subtracted from the max area permitted for parallel signs.

### 10.3 PROHIBITED SIGNS

The signs in **Table 10-2** shall be prohibited in every zoning district, unless noted otherwise in this Article.

**Table 10-2: Prohibited Signs**

Prohibited Sign Types	Exceptions
Abandoned / Nonapplicable	Monument Signs are allowed
Sign with a sign face area > 200 sf	-
Sign erected or attached to Central Square common or Railroad Square	The temporary use of handheld signs is allowed.
Animated Sign	Revolving Barber Poles 4-ft high by 1-ft wide or less (may be internally illuminated & mounted on the business frontage) 1 flag / tenant frontage that is 15-sf or less, removed at closing, attached to a wall, and does not interfere with travel or maintenance of the public right of way.
Channel Letter Signs & Reverse Channel Letter Sign	Allowed in BGR, DT-C, DT-G, DT-L, DT-E, CL, COM, CP, HC, I, IP NB
Internally illuminated Sign	Allowed in BGR, DT-C, DT-G, DT-L, DT-E, CL, COM, CP, HC, I, IP NB
Electrically Activated Changeable Copy Signs	-
Fluorescent Sign	-
Obscene Sign (per NH RSA 571-B:1)	-
Balloon Sign	Allowed as a Temporary Sign
Off-premises Sign	Allowed if permitted by state law
Reflectorized Sign	-
Roof Sign	May be mounted on architectural projections (e.g. canopies), eaves, or mansard facades
Snipe Sign	-

### 10.4 STANDARDS FOR ALL SIGNS

#### 10.4.1 Placement and Location

- A. Each sign shall be located on the same site as the subject of the sign.
- B. No sign, other than signs placed by agencies of government with appropriate jurisdiction, shall encroach upon or over a public right-of-way without approval from City Council.
- C. No sign shall cover any portion of any building wall opening or project beyond the ends or top of the building wall to which it is affixed.

#### 10.4.2 Construction and Maintenance

- A. No sign shall be erected, constructed, relocated, or otherwise maintained such that it does any of the following.
  1. Obstructs the free and clear vision of motorists or pedestrians in their travels.
  2. Causes distraction to motorists on adjacent public rights-of-way.
  3. Obstructs, interferes with, or may be confused with any government sign, restrictive sign, directional sign or other authorized traffic sign, signal, or device.
  4. Uses a revolving beacon.
  5. Obstructs any ingress/egress, inhibits light and ventilation, or constitutes a fire hazard.
- B. All signs and sign structures, including supports, braces, guys, and anchors, shall be kept in good repair and appearance in accordance with the provisions of this Article, and shall comply with all applicable construction standards, codes and regulations.

#### 10.4.3 Sign Area

- A. **Max Sign Face Area.** The maximum allowance for sign face area is included in **Table 10-3** for wall-mounted signs, and **Table 10-4** for freestanding signs, unless otherwise noted in this Article.

**B. Wall-Mounted Sign Area.** The total wall-mounted sign area for a building is derived by calculating the sum of sign areas for each wall mounted sign on the building.

**C. Freestanding Sign Area.** The total freestanding sign area for a lot is derived by calculating the

sum of sign areas for each freestanding sign on a site.

**D. Rules of Measurement.** The rules of measurement described in **Table 10-5** shall apply to all signs.

**Table 10-3: Wall-Mounted Sign - Max Sign Face Area Per Linear Foot of Building/Tenancy Frontage**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Primary Frontage	1 sf	2 sf	2 sf	2 sf	1 sf	1.5 sf
Secondary Frontage:	0.5 sf	1 sf	1 sf	1 sf	0.5 sf	0.75 sf
Parking Lot Frontage:	0.25 sf	0.5 sf	0.5 sf	0.5 sf	0.25 sf	0.5 sf

**Table 10-4: Freestanding Sign - Max Number & Sign Face Area**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Max number of signs per frontage:	1	1	1	1		
Max number of Signs per lot:	2	2	2	2	1	2
Max sign area:	1 sf per 5 lf of building frontage (not to exceed 20 sf)	1 sf per 1 lf of frontage (not to exceed 100 sf or 200 sf in COM if frontage is >300-lf)	0.5 sf per 1 lf site frontage (not to exceed 40 sf)	0.5 sf per 1 lf site frontage (not to exceed 40 sf)	32 sf	1 sf per 2 lf of lot or site frontage, or a total of 20 sf, whichever is smaller

**Table 10-5: Rules of Sign Measurement**

Measurement	Calculation
Sign Face Area	<p>Free-standing Sign:</p> <ul style="list-style-type: none"> <li>The sign structure area (excluding the portion of the structure base that contains no sign copy or related display) shall be included in the measurement of sign face area. <ul style="list-style-type: none"> <li>Rectangular Sign Face Area = Length x Width</li> <li>Round Sign Face Area = Pi (3.14159265) x radius<sup>2</sup></li> </ul> </li> <li>Signs with multiple sign faces oriented in the same direction shall have all sign faces counted together as one.</li> <li>Only 1 side of a double-sided sign face is counted.</li> <li>Ratio of sign area to sign face is equal to 3:1 for monument signs and 2:1 for all others.</li> </ul> <p>Wall Sign:</p> <ul style="list-style-type: none"> <li>Sign face area = Perimeter around the sign copy</li> <li>When sign copy is constructed of individual components attached to a building wall, sign face area shall be the perimeter around each component.</li> <li>When signs are incorporated into canopies or awnings, the entire panel containing the sign copy is counted as the sign face area.</li> </ul>
Sign Height	Measured from the grade directly below the sign to the highest point of the sign or sign structure.
Sign Clearance	Measured from the grade directly below the sign to the bottom of the sign structure enclosing the sign face.

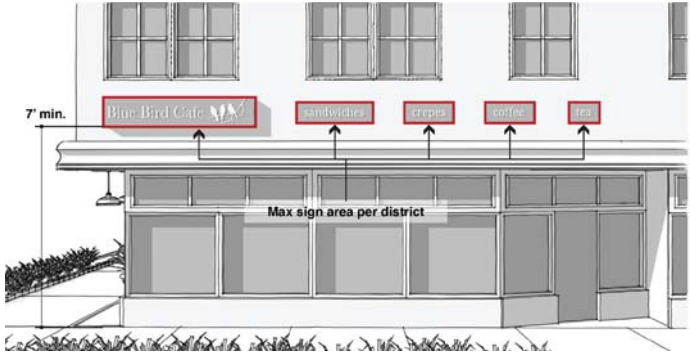
# 10.5 PARALLEL SIGN STANDARDS

## 10.5.1 Defined

A sign attached, painted, or otherwise mounted or affixed parallel to a building wall or other vertical building surface.

## 10.5.2 Standards

Parallel Signs shall not be externally illuminated before the start of business or 8:00 am, whichever is later, and after the end of the business day or 9:00 pm, whichever is later.



**Table 10-6: Parallel Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Sign Area Not to Exceed:	12 sf per business <i>(max of 36 sf per building)</i>	200-sf	See Table 10-3	See Table 10-3	See Table 10-3	See Table 10-3
Max Height:	Shall not extend above the bottom windowsills of the 2nd building story above grade	-	7 ft	7 ft	-	For 1st story businesses: signs shall not extend above the bottom windowsills of the 2nd building story (above grade);  No sign shall extend higher than the window header for each story, except window signs
Min Clearance:	7 ft	7 ft	7 ft	7 ft	-	7 ft
Max Projection from Wall:	1 ft	1 ft	1 ft	1 ft	1 ft	1 ft



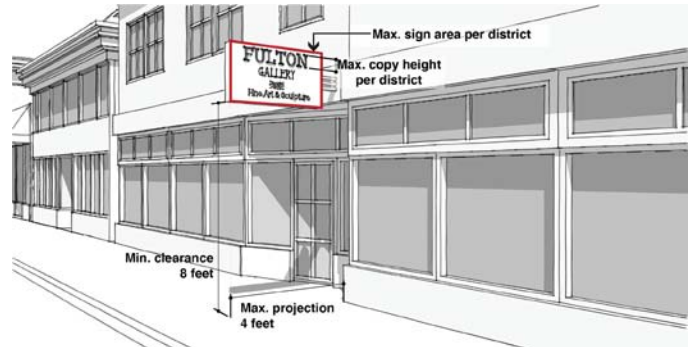
## 10.6 PROJECTING SIGN STANDARDS

### 10.6.1 Defined

A sign other than a parallel sign that is attached to or projects more than 18-in from a building face, wall, or structure whose primary purpose is other than the support of said sign.

### 10.6.2 Standards

If a projecting sign is used in the Downtown Transition, Neighborhood Business or Office Districts or on legally non-conforming commercial property in any district, no freestanding sign shall be allowed.



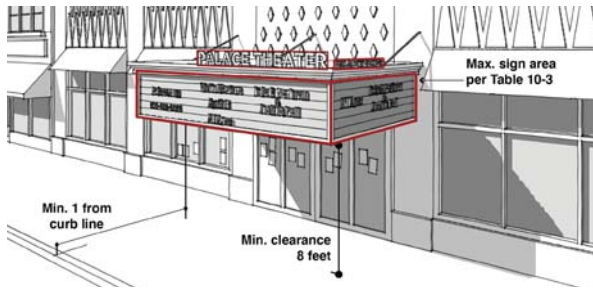
**Table 10-7: Projecting Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Sign Area Not to Exceed:	10 sf	20 sf	Not Allowed	Not Allowed	Not Allowed	20 sf
Max Number:	1 per primary frontage	1 per tenancy frontage	Not Allowed	Not Allowed	Not Allowed	1 per frontage
Max Height:	Shall not be placed or extend above the 1st story (above grade)		Not Allowed	Not Allowed	Not Allowed	18 ft
Min Clearance:	8 ft	8 ft	Not Allowed	Not Allowed	Not Allowed	8 ft
Max Projection from Wall:	4 ft	4 ft	Not Allowed	Not Allowed	Not Allowed	4 ft
Sign Copy Height:	Min of 1-in / Max of 1 ft	-	Not Allowed	Not Allowed	Not Allowed	-

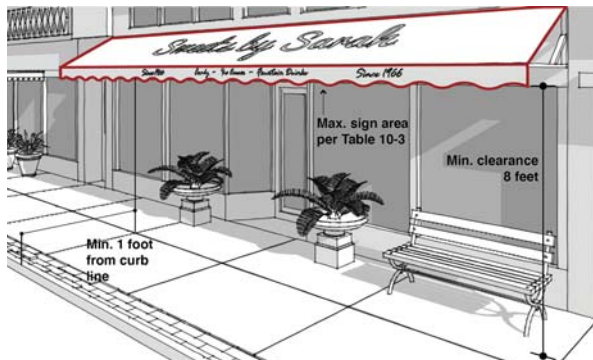
## 10.7 MARQUEE, AWNING, OR CANOPY SIGNS

### 10.7.1 Defined

- A. Marquee.** A Marquee Sign is attached to or made part of a permanent roof-like structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall.



- B. Awning/Canopy.** An Awning or Canopy Sign is a sign painted or attached to a roof-like covering affixed to a building and extending over a walkway or sidewalk. This covering may consist of vinyl, canvas, or similar material. This sign type may also be attached to a freestanding multi-sided structure supported by columns.



- C. Vehicle Fueling Station Marquee.** A sign at a vehicle fueling station attached to a permanent roof-like structure, including the structural support system, generally designed and constructed at a vehicle fueling station to provide protection against the weather.

### 10.7.2 Standards

- A.** Surface and/or soffits of a freestanding canopy may be illuminated by means of internal or external sources of light.
- B.** The sign face area of Vehicle Fueling Station Marquee signs shall be subtracted from the max allowable freestanding sign area of the district in which the sign is located.

**Table 10-8: Marquee, Awning or Canopy Sign Dimensional Requirements**

All Zoning Districts & Legally Non-Conforming Commercial Property

Max Sign Area:	See Table 10-3
Min Clearance:	8 ft
Min Setback from Curblines:	1 ft
Location of Sign Area:	<ul style="list-style-type: none"> <li>• May have signage on the front, side, or ends of the marquee, awning, or canopy, and/or any combination thereof.</li> <li>• All such signage shall be considered as 1 sign, and may contain the same message or logo.</li> </ul>
Messages or Logos:	If any sign front, side, or end is greater than 10 ft in length, a message or logo may be repeated up to 3 times, provided each is 5 ft in length.

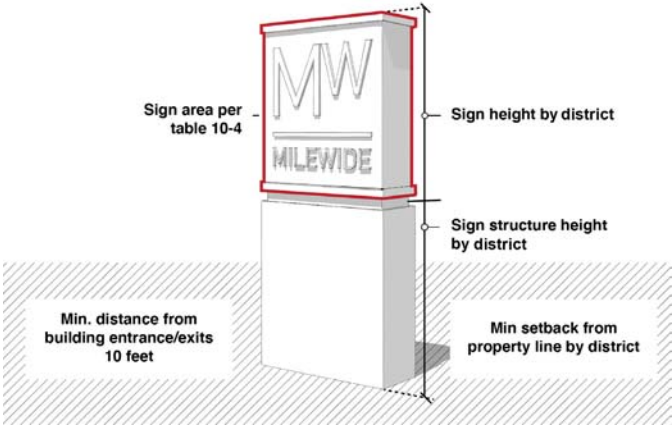
# 10.8 FREESTANDING SIGN

## 10.8.1 Defined

A sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground.

## 10.8.2 Standards

Shall not be externally illuminated before the start of business or 8:00 am, whichever is later, and after the end of the business day or 9:00 pm, whichever is later.



**Table 10-9: Freestanding Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Sign Number and Sign Area:	See Table 10-4	See Table 10-4	See Table 10-4	See Table 10-4	See Table 10-4	See Table 10-4
Max Height:	8 ft for sign structure and 6 ft for sign when placed within ½ of the district's front setback, 14 ft for sign structure and 12 ft for sign when placed behind this line.	14 ft when placed within ½ of district's front setback; 18 ft when placed behind this line	8 ft for sign structure and 6 ft for sign when placed within ½ of district's front setback; not to exceed 15 ft when placed behind this line	8 ft for sign structure and 6 ft for sign when placed within ½ of district's front setback; not to exceed 15 ft when placed behind this line	12 ft	10 ft
Min Setback from Property Line:	5 ft	5 ft	5 ft	5 ft	5 ft	0 ft
Min Distance from Building Entrance / Exits:	10 ft	10 ft	10 ft	10 ft	10 ft	10 ft

## 10.9 DEVELOPMENT SIGN

### 10.9.1 Defined

A free-standing sign located at the entrance to a site or parcel approved by the Planning Board that is planned, developed, operated, and maintained, according to the site or subdivision plan as a single entity, under a single project name, and containing 1 or more structures with appurtenant common areas.

### 10.9.2 Standards

- A. Shall only be externally illuminated.
- B. If there is more than 1 access road to a development, the signs shall be a minimum of 300-ft apart.
- C. Shall be located on the side of the road or in an island if the road is divided.
- D. Shall be located either on public land or private land owned by the developer. If located on private land, said land must be owned by and a part of the development. If located within a city right-of-way, City Council permission shall be required prior to the erection and construction of said sign.
- E. No temporary sign shall be attached to or otherwise hung from a development sign or any part thereof, including the sign structure.
- F. If a development is owned by more than 1 person, the application for a sign permit shall be signed by all persons that represent more than 80% of the land of the development.

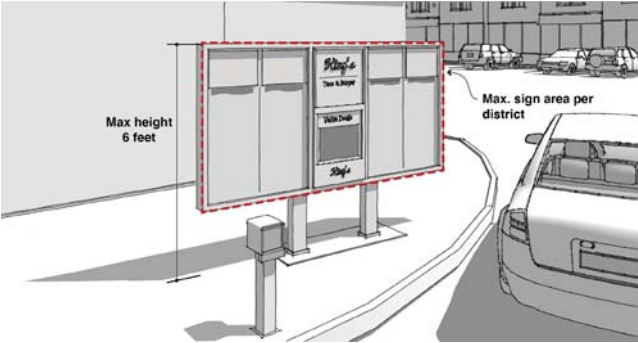
**Table 10-10: Development Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Number of Signs Per Access Road to Development:	1	1	1	1	Not Allowed	1
Max Sign Area	50 sf	50 sf	50 sf	50 sf	Not Allowed	50 sf
Max Height:	10 ft	10 ft	10 ft	10 ft	Not Allowed	10 ft
Sign Copy Height:	Min of 8" / Max of 18"	Min of 8" / Max of 18"	Min of 8" / Max of 18"	Min of 8" / Max of 18"	Not Allowed	Min of 8" / Max of 18"

# 10.10 DRIVE-THROUGH & CHANGEABLE COPY SIGN

## 10.10.1 Defined

- A. Drive-Through.** A Drive-Through Sign is a sign constructed along drive-through lanes for drive-through facilities. A drive-through sign does not include parking lot, parking structure, and site circulation point signs.
- B. Changeable Copy.** A Changeable Copy Sign is a sign whereon provision is made for letters, characters, or other copy to be placed in or upon the surface area to provide a message that is capable of being changed.



**Table 10-11: Drive-Through Sign & Changeable Copy Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Max Sign Area:	Not Allowed	16 sf per sign; max of 1 changeable copy sign per lot or building frontage	Not Allowed	Not Allowed	Not Allowed	
Max Number:	Not Allowed	2 per lot or building frontage	Not Allowed	Not Allowed	Not Allowed	2 per lot or building frontage
Max Height:	Not Allowed	6 ft for drive-through sign; 12 ft for changeable copy sign	Not Allowed	Not Allowed	Not Allowed	6 ft
Max Projection from Wall:	Not Allowed	1 ft	Not Allowed	Not Allowed	Not Allowed	1 ft
Setback:	Not Allowed	Shall not be in front setback	Not Allowed	Not Allowed	Not Allowed	

## 10.11 PORTABLE SIGN

### 10.11.1 Defined

Any sign not permanently attached to the ground or to a building or building surface (e.g. sandwich board or vertical sign).

### 10.11.2 Standards

- A. Shall be subject to requirements of Chapter 46 of City Code of Ordinances.
- B. Shall be stored indoors during storms and after business hours by the sign owner.



**Table 10-12: Portable Sign Dimensional Requirements**

	Zoning District					
	DT-T, NB, O, <i>Legal non-conforming commercial property in any district</i>	BGR, COM, CL, DT-E	I, IP, CP	DT-I, HC	C, A	DT-C, DT-G, DT-L
Max Sign Area (counted in addition to the area calculated for free-standing signs):	Not Allowed	10 sf for sandwich board; 3 sf for vertical sign	Not Allowed	Not Allowed	Not Allowed	10 sf for sandwich board; 3 sf for vertical sign
Max Number:	Not Allowed	1 sandwich board; 1 vertical sign	Not Allowed	Not Allowed	Not Allowed	1 sandwich board; 1 vertical sign
Max Height:	Not Allowed	6 ft for sandwich board; 3½ ft for vertical sign	Not Allowed	Not Allowed	Not Allowed	6 ft for sandwich board; 3½ ft for vertical sign

## 10.12 SPECIFIC STANDARDS FOR DOWNTOWN SIGNS

The following standards shall apply to signs in the Downtown Core, Downtown Growth, and Downtown Limited Districts, in addition to all other applicable standards in this Article.

### 10.12.1 Sign Placement

- A. Signs shall not cover significant architectural features of the building or facade.
- B. Signs shall not override the architectural limits set by the building's facade, window spacing, lintel depth, or pediment size.
- C. If a natural spacing is provided for on the facade, the sign shall be placed within it.

### 10.12.2 Sign Colors

- A. Any 1 sign shall be limited to no more than 5 principal colors on the sign.
  - 1. If natural wood is used in the sign, it shall count as 1 of the 5 principal colors.
  - 2. An additional color may be used for a border, piping, and/or shadow; but, it shall not exceed 10% of the square footage of the sign.
- B. Any number of colors may be used in an emblem/logo/picture that does not exceed 20% of the square footage of the sign.
- C. The background color of signs shall be limited to dark crimson, dark green, dark brown, dark blue, black, dark gray, dark purple, dark gold, or shades of white.

### 10.12.3 Sign Area for Multi-Story Buildings

- A. The second building story above grade plane shall only be allowed to have a sign(s) that is 50% of the calculated first story ground floor area.
- B. All other stories higher than the second story above grade shall only be allowed to have a sign(s) that is 30% of the calculated first story ground floor area.

- C. Signage for the entire building facade shall not exceed the maximum allowable sign area calculated for the first story above grade.

### 10.12.4 Business Directory Signs

- A. Only 1 business directory sign per tenant frontage is permitted.
- B. The maximum dimensions of a business directory sign shall be 2-ft wide by 4-ft high.
- C. Each panel within the main business directory sign frame shall be no more than 6-in high.

### 10.12.5 Internally Illuminated Signs

- A. Internally illuminated signs shall only be installed inside the glass.
- B. The total sign area of all internally illuminated signs shall be no more than 5-sf per tenant frontage.

## 10.13 TEMPORARY SIGNS

### 10.13.1 Temporary Sign Permit

A sign permit shall be required prior to the erection, construction, relocation, alteration or maintenance of temporary signs, unless specifically excepted from the permit requirement as set forth in **Table 10-13**.

### 10.13.2 Duration of Temporary Sign Permit

- A. Permits for temporary signs shall be valid for 14-days, after which time the temporary sign shall be removed.
- B. In any 1 calendar year, a subsequent temporary sign permit may be issued, only after the previous temporary sign permit has expired and the sign has been removed for at least 30-days.
- C. Only 4 temporary sign permits shall be issued in any 1 calendar year to the same property owner or applicant.
- D. A single permit for a temporary sign shall include all such temporary signs on the premises.

- E. Temporary signs shall be in conformance with the provisions of this Article, as well as all other applicable codes and regulations.

### 10.13.3 Exceptions

The temporary signs listed in **Table 10-13** shall be exempted from the requirement for a sign permit, unless otherwise noted in this Article.

## 10.14 REMOVAL OF SIGNS

The owner of property upon which any sign or sign structure is found by the Community Development Department to be unsafe or unsecure as defined in the State Building Code and any adopted amendments, or which has been erected, constructed, repaired, altered, relocated, or maintained in violation of the provisions of this Article, shall be notified in writing to correct the unsafe, or unsecure condition or violation.

If said condition or violation is not corrected in a timely manner, the Community Development Department may then order the removal of said sign or sign structure and/or revoke the permit therefore.

**Table 10-13: Temporary Signs Exempt from Permit Requirements**

Temporary Sign Type	Condition for Permit Exemption
Signs with sign face area < 6-sf	<ul style="list-style-type: none"> <li>• Specific to the following districts: A; C; R; LD; LD-1; MD; HD; HD-1; O; DT-T; NB; DT-C; DT-L; RP.</li> <li>• Only 1 sign allowed per lot</li> </ul>
Sign with sign face area < 32-sf	<ul style="list-style-type: none"> <li>• Specific to the following districts: BGR; COM; CP; DT-G; DT-E; DT-I; HC; I; IP</li> <li>• Only 1 sign allowed per lot</li> </ul>
Mobile Vendor Signs	<ul style="list-style-type: none"> <li>• Vendors shall be licensed and selling merchandise on the property.</li> <li>• The total sign area of all signs on a lot shall not exceed 12-sf</li> </ul>
Business Relocation Signs	<ul style="list-style-type: none"> <li>• Sign face area shall not exceed 24-sf.</li> <li>• Shall be removed within 45-days after the business has been relocated.</li> </ul>
Construction Activity	<ul style="list-style-type: none"> <li>• Shall be limited to 1 sign per lot for any development when building permits have been issued.</li> <li>• Total sign face area shall not exceed 48-sf.</li> <li>• Shall be removed within 20-days after the last structure has been initially occupied or upon expiration of the building permit, whichever is sooner.</li> </ul>
Temporary Event Signs	<ul style="list-style-type: none"> <li>• Only allowed in the COM and DT-G Districts.</li> <li>• Signs shall not exceed 4-ft by 8-ft</li> <li>• Shall not be placed in or within 10-ft of any travel lane or driveway.</li> <li>• May be displayed 2-weeks prior to the event, plus the duration of the event.</li> <li>• Shall be removed within 24-hrs after the event concludes.</li> <li>• Shall not be internally or externally illuminated</li> <li>• Shall be separated from other sites containing other actively permitted periodic event signs by a 1,000-ft separation as measured from property line to property line.</li> <li>• May be subject to Chapter 46 of City Code of Ordinances</li> </ul>
Posters, bulletins, banners, notices displayed inside windows	Total sign area shall not exceed 10% of total window area of any building elevation and shall not exceed 10-sf on each building elevation
Off-site Open House Signs	Shall be removed at the end of the day of the open house.
Temporary Signs on Public Property	Subject to requirements of Chapter 46 of the City Code of Ordinances





# ARTICLE 11. SURFACE WATER PROTECTION OVERLAY DISTRICT

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**11.1 PURPOSE**

The purpose of the Surface Water Protection Overlay District is to:

- 1. Protect the functions and values of surface waters and, in particular, the buffers associated with these resources, which reduce the rate and volume of runoff;
- 2. Prevent the loss or degradation of natural stormwater storage, infiltration and conveyance capacity within the city;
- 3. Prevent water quality deterioration associated with stormwater runoff;
- 4. Maintain the health and holding capacity of natural surface and ground waters; and,
- 5. Protect the quality and connectivity of wildlife habitat and corridors.

**11.2 APPLICABILITY**

**11.2.1 Generally**

All land within the Surface Water Protection Overlay District, as defined in **Section 11.3**, is subject to the standards set forth in this Article, unless otherwise noted.

**11.2.2 Conditional Use Permit**

A surface water protection conditional use permit issued by the Planning Board may be required as specified in **Section 11.6** of this Article for certain uses to occur or structures be constructed, enlarged, relocated, or altered within the Surface Water Protection Overlay District.

**11.2.3 Renovations & Repairs**

The provisions of this Article shall not apply to renovations or repairs of existing structures that do not result in an expansion of the structure’s footprint into or within the Surface Water Protection Overlay District.

**11.2.4 Exemptions**

The following surface waters shall not be subject to this Article.

- A. Manmade ditches, swales, sedimentation/ detention/retention basins or ponds legally constructed to collect, convey, treat or control stormwater runoff
- B. Manmade agricultural/irrigation ponds
- C. Fire ponds and cisterns
- D. Ditches, streams or waterways that have been constructed or altered to manage drainage and/ or flooding, and are commonly referred to as "tax ditches".

**11.3 DISTRICT DEFINED**

**11.3.1 District Definition**

- A. **District Boundary.** The Surface Water Protection Overlay District is an area of land buffering all surface waters, which include perennial and seasonal streams, lakes, ponds, wetlands and wetland complexes, vernal pools, fens and sloughs.
- B. **Surface Water Buffer.** The Surface Water Protection Overlay District buffer area is measured on a horizontal plane from either the top of the bank of a stream, or the ordinary high water mark of a river, or the reference line of a lake or pond, or the delineated edge of a wetland or change in soil type.
  - 1. In the Rural, Agriculture, and Conservation Zoning Districts, the Surface Water Protection District is a 75-ft wide buffer.
  - 2. In all other zoning districts, the Surface Water Protection District buffer is 30-ft wide.
- C. **Buffer Reduction.** In specific cases, the Surface Water Protection District buffer area may be reduced to 30-ft in zoning districts requiring a 75-ft buffer and to 10-ft in zoning districts requiring a 30-ft buffer, at the discretion of the Planning Board, and if the applicant for a

surface water protection conditional use permit provides extraordinary mitigation, replication, and/or restoration of surface waters and wetlands, and/or open space preservation measures.

### 11.3.2 Determination of Surface Water Boundaries

- A.** The location, area, and limits of all surface waters shall be field determined and delineated by a NH Certified Wetland Scientist.
  - 1.** Any surface water delineation completed without clear evidence of vegetation, from the current or prior growing season, shall be verified during the subsequent growing season at the owner's expense.
    - a.** If, upon future investigation, the surface water boundaries vary from the initial delineation, a revised plan shall be submitted to the Community Development Department. Any development shown on the revised plan shall be in compliance with this Article.
- B.** In determining the size of a surface water body, any portion of the surface water that may be located on an adjacent parcel or in an adjacent municipality shall be included based on best available information.
- C.** Roads, drainage culverts, or other man-made features shall not constitute an interruption in the delineation of the size of the surface water.
- D.** Where an area is not designated on a plan as a surface water and the Planning Board, after consultation with the Community Development Department and the Conservation Commission, believes it to be a surface water, the Planning Board may require the applicant to supply the findings of a NH Certified Wetland Scientist as to the character of the area, at the expense of the applicant.

## 11.4 PROHIBITED USES

The following are expressly prohibited from the Surface Water Protection Overlay District.

- A.** Subsurface wastewater disposal systems
- B.** Salt storage including the storage of road salt or sand treated with road salt
- C.** Automobile junk yards, salvage yards, service or repair shops
- D.** Hazardous waste facilities
- E.** Bulk storage of chemicals, petroleum products or hazardous materials, in amounts greater than those for household or agricultural use
- F.** Earth excavation operations as defined in **Article 24**
- G.** Off-site dumping or disposal of snow and ice collected from roadways or parking areas, not including snow-plowing of existing roadways
- H.** Storage or disposal of solid waste, liquid or leachate waste, animal wastes or by-products
- I.** Landfills, solid waste transfer stations, recycling facilities, incinerators, or composting facilities.
- J.** Animal feedlot operations

## 11.5 PERMITTED USES

The following are permitted in the Surface Water Protection Overlay District without a surface water protection conditional use permit, subject to any provisions specified in this Article.

- A.** Agricultural activities and operations as defined in NH RSA 21-34-a and governed by NH RSA 430, subject to Best Management Practices (BMPs) for agriculture and compliance with all related state and local laws. Agriculture BMPs shall be as stated in the following manuals, as they may be amended.
  - 1.** Best Management Wetlands Practices for Agriculture in NH (NH Department of Agriculture, July 1993)

2. The Manual of Best Management Practices for Agriculture in NH (NH Department of Agriculture, current edition)
- B. Forestry, tree farming, and logging operations, subject to Best Management Practices for forestry, and compliance with all related state and local laws. Forestry BMPs shall be as stated in the following manuals, as they may be amended.
    1. Best Management Practices for Erosion Control on Timber Harvesting Operations in NH (NH Department of Resources and Development, current edition)
    2. Best Management Practices for Forestry: Protecting NH's Water Quality (UNH Cooperative Extension, current edition)
  - C. Water impoundments when required state or federal permits have been issued
  - D. Ground water withdrawal well for a single-family dwelling or two-family dwelling, and wells for the City drinking water supply
  - E. Geothermal heating and cooling systems (e.g. groundwater wells and subsurface heat exchange installations)
  - F. Trails constructed and maintained in accordance with Best Management Practices for trails as stated in the manual, Best Management Practices for Erosion Control During Trail Maintenance and Construction (NH Bureau of Trails, 2004), as may be amended.
  - G. Wildlife or fisheries management activities.
  - H. Educational activities and scientific research consistent with the purpose and intent of this Article.
  - I. New driveways for single- and two-family dwellings subject to the following provisions.
    1. The driveway serves to access uplands on a lot(s) of record that existed at the time this Overlay District was first adopted.
    2. The driveway provides access to no more than 2 existing lots on a shared driveway.
  - J. All normal maintenance of existing roadways and utilities, including winter maintenance
  - K. Repair, repaving, replacement, and reconstruction of existing roads, bridges, culverts and drainage systems and utilities
  - L. Construction of compensatory flood storage under **Article 23** as long as no part of the compensatory flood storage excavation is within a wetland and subject to the issuance of a Floodplain Development Permit according to **Section 25.13.**
  - M. Construction of new or expansion of existing single-family or two-family dwellings and associated accessory structures on lots that legally existed before the adoption of this Article, provided that the following criteria are met. The Zoning Administrator shall be responsible for determining whether these criteria are met.
    1. It is not feasible to place the structure on a portion of the lot that is located outside of the Surface Water Protection Overlay District.
    2. The structure is set back as far as reasonably possible from the edge of the surface water.
    3. Applicable erosion control measures are in place prior to and during construction.
  - N. There is no reasonable alternative location for development on the lot that would avoid the disturbance of lands within the Surface Water Protection Overlay District.
  - O. The driveway is designed to minimize any disruption to lands within the Surface Water Protection Overlay District.
  - P. All applicable NH Wetlands Bureau permits have been acquired for any proposed disturbance of surface waters regulated by the State.
  - Q. All surface water resources and applicable buffer areas have been delineated by a NH Certified Wetland Scientist and are shown as part of a Street Access Permit application.

4. Any disturbance to the surrounding buffer area is repaired and restored upon completion of construction.
5. A minimum 30-ft buffer is maintained from surface waters in lots in the Rural, Conservation, and Agriculture Zoning Districts, and a 10-ft buffer is maintained from surface waters in all other zoning districts.
6. Any alteration to a surface water is made in accordance with all applicable state and federal laws, administrative rules, and regulations.

## 11.6 CONDITIONAL USE PERMIT

### 11.6.1 Activities Subject to Conditional Use Permit

- A. A surface water protection conditional use permit issued by the Planning Board shall be required for the following uses or structures when proposed to be located within the Surface Water Overlay Protection District.
  1. Construction of a new structure or expansion of an existing structure, with the exception of those structures specified in **Section 11.5**, which expands the footprint of such structure within the Surface Water Protection Overlay District
  2. Creation of new lots by subdivision that would require the disturbance or crossing of lands within the Surface Water Protection Overlay District.
  3. Construction of new roads, driveways (excluding single- and two-family driveways), and parking lots.
  4. Construction of new stormwater management facilities and structures or improvements, including but not limited to, sedimentation/detention/retention ponds, drainage swales, and erosion control devices.
  5. Construction of compensatory flood storage excavation under **Article 23** that requires the issuance of a wetland permit.

- B. A surface water protection conditional use permit shall not be required for impacts to areas within the Surface Water Protection Overlay District that are under the jurisdiction of the NH Department of Environmental Services and when the state has issued a Wetlands Permit or Shoreland Permit.

### 11.6.2 Conditional Use Permit Standards

The Planning Board shall issue a surface water protection conditional use permit for the activities described in **Section 11.6.1**, if it finds that all of the following criteria have been met.

- A. The proposed use and/or activity cannot be located in a manner to avoid encroachment into the Surface Water Protection Overlay District.
- B. Encroachment into the buffer area has been minimized to the maximum extent possible, including reasonable modification of the scale or design of the proposed use.
- C. The nature, design, siting, and scale of the proposed use and the characteristics of the site, including but not limited to topography, soils, vegetation, and habitat, are such that when taken as a whole, will avoid the potential for adverse impacts to the surface water resource.
- D. The surface water buffer area shall be left in a natural state to the maximum extent possible.
  1. The Planning Board may establish conditions of approval regarding the preservation of the buffer, including the extent to which trees, saplings and ground cover shall be preserved.
  2. Dead, diseased, unsafe, fallen or invasive trees, saplings, shrubs, or ground cover may be removed from the surface water buffer area.
  3. Tree stumps and their root systems shall be left intact in the ground, unless removal is specifically approved in conjunction with a surface water protection conditional use permit granted by the Planning Board. The

stumps and root balls of exotic, invasive species may be removed by hand digging and/or hand cutting.

4. Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged. Planting of native species of trees, shrubs, or ground cover that are beneficial to wildlife is encouraged.
  5. Where there has been disturbance or alteration of the surface water buffer during construction, re-vegetation with native species may be required by the Planning Board.
- E. The Planning Board may consider the following to determine whether allowing the proposed encroachment will result in an adverse impact on the surface water resource.
1. The size, character, and quality of the surface water and the surface water buffer being encroached upon.
  2. The location and connectivity of the surface water in relation to other surface waters in the surrounding watershed.
  3. The nature of the ecological and hydrological functions served by the surface water.
  4. The nature of the topography, slopes, soils, and vegetation in the surface water buffer.
  5. The role of the surface water buffer in mitigating soil erosion, sediment and nutrient transport, groundwater recharge, flood storage, and flow dispersion.
  6. The extent to which the surface water buffer serves as wildlife habitat or travel corridor.
  7. The rate, timing and volume of stormwater runoff and its potential to influence water quality associated with the affected surface water or any associated downstream surface waters.
  8. The sensitivity of the surface water and the surface water buffer to disruption from changes in the grade or plant and animal habitat in the buffer zone.

### 11.6.3 Conditional Use Permit Application Procedure

All applications for a surface water protection conditional use permit under this Article shall be made to the Planning Board and submitted to the Community Development Department following the procedures set forth in **Article 25** for conditional use permits, as they may be amended, and those listed below.

#### A. Referral to the Conservation Commission

1. Upon receipt by the Community Development Department, all applications for a surface water protection conditional use permit shall be forwarded to the Conservation Commission a minimum of 5-business days prior to the Commission's next regularly scheduled meeting.
2. Upon receipt of a surface water protection conditional use permit application, the Conservation Commission may conduct an evaluation of the application based on the criteria set forth in **Section 11.6.2**, and provide advisory comments to the Planning Board.

#### B. Submission requirements

In addition to the materials required in **Article 25 for a conditional use permit**, an applicant for a surface water protection conditional use permit shall submit the following items as part of their application.

1. A written explanation of how the proposal complies with the criteria set forth in **Section 11.6.2**.
2. A proposed conditions plan and an existing conditions plan, which include the following information.
  - a. A plan prepared by a NH certified wetlands scientist that delineates the location, area, and limits of surface waters on the site, along with the associated Surface Water Protection Buffer as specified in this Article.
  - b. Details showing the proposed encroachment into the Surface Water

Protection Overlay District.

3. Any information necessary to demonstrate that the proposed encroachment will not cause adverse impacts to the surface water resource, or design details that demonstrate that proposed mitigation will prevent adverse impacts to the surface water resource.

**C. Boundary Markers**

The boundaries of the Surface Water Protection Overlay District buffer areas, and the associated surface water, shall be marked as such on the site with stakes and flagging or permanent markers along the buffer perimeter. Such demarcation shall remain in place until any construction is complete or following approval from the Community Development Department.





# ARTICLE 12. HILLSIDE PROTECTION OVERLAY DISTRICT

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## 12.1 PURPOSE

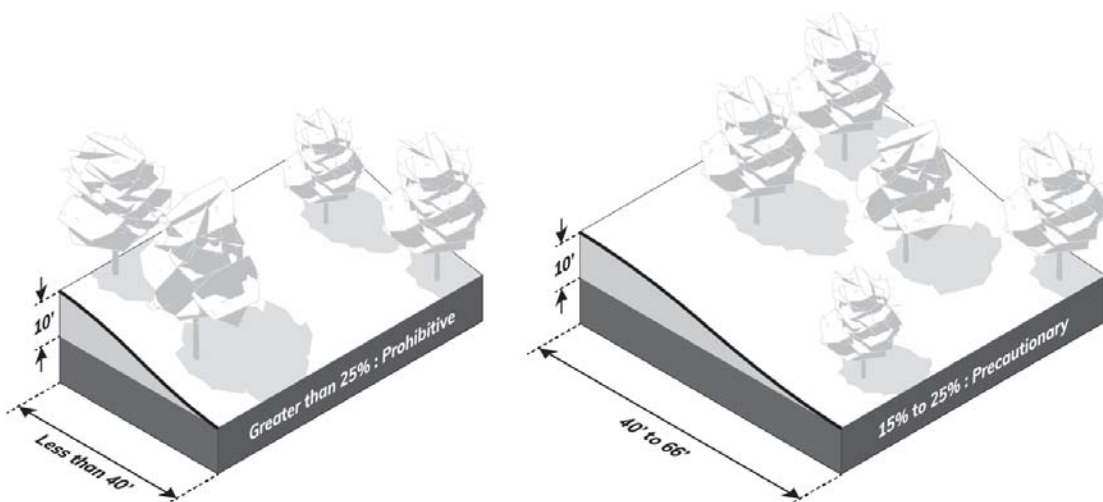
The purpose of the Hillside Protection Overlay District is to protect the City's ecological and scenic resources from undue adverse impacts resulting from development of steep slopes, ridgelines, and visually sensitive lands, and to guide development of those hillside areas where it can be safely accomplished.

## 12.2 APPLICABILITY

### 12.2.1 District Defined

- A. The standards set forth in this Article shall apply to all land area with prohibitive and/or precautionary slopes as defined below.
- 1. Prohibitive Slopes.** Prohibitive slopes are slopes of greater than 25% where any land area has an elevation gain of greater than 10-ft over a horizontal distance of 40-ft or less.
  - 2. Precautionary Slopes.** Precautionary slopes are slopes of 15% and up to 25% where any land area has an elevation gain of 10-ft over a horizontal distance between 66-ft and 40-ft.

- B.** Slopes in excess of 15% that were constructed during the lawful development of a site in accordance with this Article shall not count toward the future delineation of steep slopes.
- C.** All new construction or improvements on land areas within the Hillside Protection Overlay District shall comply with the applicable standards set forth in this Article, in addition to any other applicable regulations in this LDC or the City Code of Ordinances.
  - 1.** An evaluation for compliance with this Article shall be performed by the City Engineer at the time of application for any subdivision, site plan, building permit, street access permit, or conditional use permit. The City Engineer may require special studies or information in order to make this determination. Upon completion of their review, the City Engineer shall advise the appropriate review and decision making authority regarding compliance of the application with the standards of this Article.
  - 2.** The City Engineer shall refer all Street Access Permit applications with driveway layouts that affect land areas subject to this Article to the Planning Board for approval.



### 12.2.2 Conditional Use Permit

A hillside protection conditional use permit from the Planning Board shall be required if a total area of precautionary slopes greater than 20,000-sf on an individual lot is proposed to be altered by the removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, and/or removal of native soil.

### 12.2.3 Interpretation of Boundaries

- A. Where an interpretation is needed as to the boundary location of prohibitive or precautionary slopes in relation to a given lot, a determination shall be made by the City Engineer based on a field survey prepared by a NH licensed surveyor, at the expense of the applicant, of contour intervals of 2-ft or less; or, in the absence of a field survey, based on contour intervals of 2-ft or less determined by aerial photogrammetric methods.
- B. Any party aggrieved by any such determination may appeal to the Zoning Board of Adjustment.

## 12.3 DESIGN & USE STANDARDS

### 12.3.1 Generally

- A. Development, including clearing, grading and construction, on all land areas in the Hillside Protection Overlay District shall be designed, sited, or carried out in a manner that does not cause undue adverse impact to the physical environment and shall provide for the retention of native soil, stabilization of slopes, and prevention of erosion or sedimentation of streams and watercourses.
- B. Existing natural and topographic features, including vegetative cover, shall be retained on lands subject to this Article, except where removal of vegetation and grading are expressly permitted in accordance with the standards set forth herein.
- C. Structures, where permitted, shall be designed and sited in a manner that limits the removal of vegetation and grading, and avoids natural

features such as prominent knolls, ridgelines, ravines, and natural drainage courses.

- D. Erosion and sediment control measures, soil stabilization measures and stormwater management systems shall be designed and installed in accordance with best management practices, contained in the most recent version of "Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire" and shall be adequate to mitigate potential adverse impacts associated with the disturbance of steep slopes, during and after construction.

### 12.3.2 Prohibitive Slope Standards

- A. The following shall not be permitted within prohibitive slope areas except as expressly indicated in **Section 12.3.2.B.**
  - 1. Removal of vegetation
  - 2. Grading of slopes
  - 3. Erection of buildings
  - 4. Addition of impermeable surfaces
  - 5. Installation of sewage disposal systems, new streets
  - 6. Removal of native soil
- B. The following shall be permitted in prohibitive slope areas subject to the standards set forth in this Article.
  - 1. Construction of a new driveway across a prohibitive slope area to access a new single-family dwelling on a lot that existed at the time this Article was adopted, provided that there is no alternative driveway location that would avoid the prohibitive slope.
  - 2. Expansion of a building that existed either wholly or partially within the prohibitive slope area at the time this Article was adopted, provided that:
    - a. The area of the expanded footprint within the prohibitive slope area does not exceed 25% of the portion of the original footprint located in the

prohibitive slope area; and

- b. No additional future expansion within the prohibited slope area shall be permitted.
- 3. Installation of public or private utility lines (e.g. power, phone, cable, gas, water, sewer, and storm drainage) when it can be demonstrated that there is no other alternative for siting the utility line.
- 4. Earth excavation operations subject to standards set forth in **Article 24** of this LDC.
- 5. Forestry, logging or woodcutting activities allowable under state law, and permitted and performed in accordance with any state requirements and Best Management Practices.
- 6. Construction of trails, ski lift towers and lift service roads associated with commercial alpine or cross-country ski activities.

### 12.3.3 Precautionary Slope Standards

- A. The following shall be permitted in precautionary slope areas subject to the standards set forth in this Article.
  - 1. Installation of public or private utility lines (e.g. power, phone, cable, gas, water, sewer, and storm drainage) when it can be demonstrated that there is no other alternative for siting the utility line.
  - 2. Earth excavation operations subject to standards set forth in **Article 24** of this LDC.
  - 3. Forestry, logging and/or woodcutting activities allowable under state law and permitted and/or performed in accordance with any state requirements and Best Management Practices.
  - 4. Construction of trails, ski lift towers and lift service roads associated with commercial alpine or cross-country ski activities.
  - 5. Agricultural activities with the exception of any structures.
- B. The following shall be permitted if removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces,

installation of sewage disposal systems, and/ or removal of native soil does not exceed a total of 20,000-sf of precautionary slope area on an individual lot. This limit of 20,000-sf may be increased subject to the issuance of a hillside protection conditional use permit issued by the Planning Board.

- 1. Construction of a single-family dwelling or accessory structures normally associated with residential uses (e.g. garage, shed, barn).
- 2. Construction of a driveway or shared driveway.
  - a. For shared driveways, the area of removal of vegetation, grading of slopes, addition of impermeable surfaces, or removal of native soil within the shared portion of the combined driveway shall not count toward the limit of 20,000-sf.
- 3. Construction of a city street or private road.

### 12.3.4 Standards for Commercial Alpine or Cross Country Ski Trails, Ski Lift Operations & Service Roads

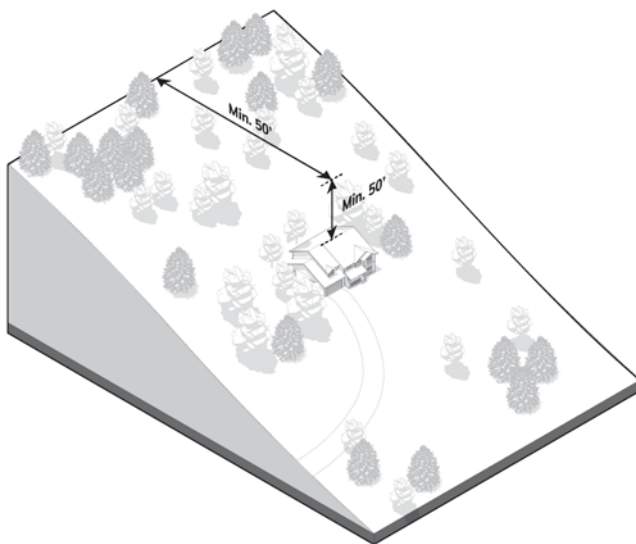
- A. Trails located on prohibitive or precautionary slopes that are associated with commercial outdoor recreation uses shall:
  - 1. Meet Best Management Practices for trail design and stormwater management;
  - 2. Be sited to follow natural contours of the slope; and,
  - 3. Retain and reuse old farm roads or old logging roads to limit clearing and disruption of the landscape.
- B. Service roads located on prohibitive or precautionary slopes that are associated with commercial outdoor recreation uses shall:
  - 4. Not exceed a 15% slope at any point along the grade of the service road;
  - 5. Not exceed a 16-ft travel lane width and 1-ft shoulder width on either side; and,
  - 6. Follow the natural contours of the slope to minimize disturbance of vegetation and

soils.

- C. Cutting and filling of slopes to accommodate ski trails or service roads crossing prohibitive and precautionary slope areas shall be limited and shall comply with applicable grading standards set forth in **Section 12.3.5** of this LDC.

### 12.3.5 Site Preparation, Grading, & Construction Standards

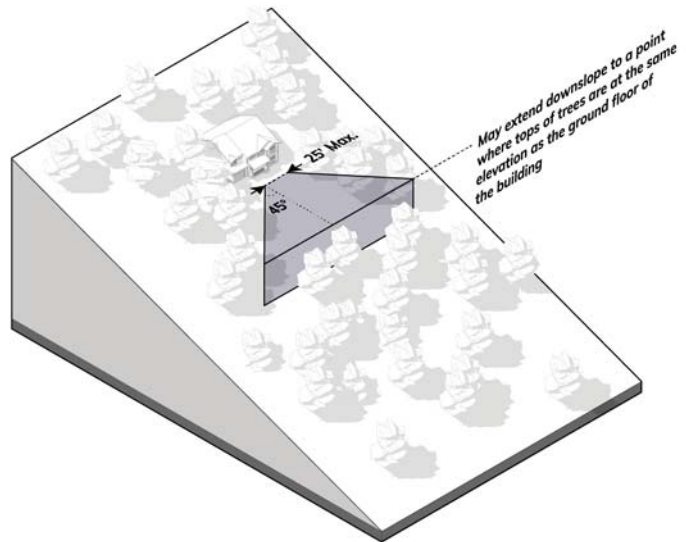
- A. **Siting of buildings.** The highest point of a structure that requires any permit shall be located at least 50 vertical feet below and 50 horizontal feet from the top of a ridgeline or hilltop, measured at approximate right angles to the ridgeline or the hilltop. Ridgeline shall be defined as a narrow elevation of land or similar range of hills or mountains representing the highest elevation of such landforms which also include prohibitive or precautionary slopes.



- B. Structures built on prohibitive or precautionary slopes shall be set into topography using partial earth sheltering.
- C. **Grading.** Graded areas on prohibitive or precautionary slopes shall not be larger than the area necessary to construct all buildings, accessory buildings or structures, plus the area needed to accommodate access, parking, and turnaround areas.

### 12.3.6 View Clearing

- A. Trees on prohibitive or precautionary slopes may be removed beyond the building area for a width of clear cutting not to exceed 25-ft and extending outward from the edge of clearing within the building area at an angle of 45-degrees or less on both sides, to a point down-slope where the tops of the trees are at the same elevation as the ground floor of the building. The 25-ft opening may be at any point along the down-slope boundary.



- B. A plan detailing any proposed clearing for views on prohibitive or precautionary slopes shall be submitted with applications for subdivisions, site plan review, or building permits.

### 12.3.7 Drainage & Stormwater Management

- A. A drainage management system designed to accommodate the stormwater volumes associated with a 50-yr, 24-hr storm event shall be required to manage stormwater runoff from all new impervious surfaces located on land areas subject to this Article.
- B. Runoff shall be dispersed within the subject lot.
- C. Natural drainage courses shall not be disturbed and shall be incorporated as an integral part of the drainage and stormwater design.

## 12.4 CONDITIONAL USE PERMIT REQUIREMENTS

- A.** All applications for a hillside protection conditional use permit under this Article shall be made to the Planning Board and submitted to the Community Development Department following the procedures set forth in **Article 25** for conditional use permits, as they may be amended.
- B. Submission requirements.** In addition to the application materials required for a conditional use permit in **Article 25**, applicants for a hillside protection conditional use permit shall submit the following materials.
- 1.** A proposed conditions plan and an existing conditions plan certified by a NH licensed engineer or surveyor, which include the following information.
    - a.** The boundaries of the existing parcel and any proposed parcel(s).
    - b.** A depiction of topographic features based on a field survey or aerial photogrammetry with contour intervals of 2-ft or less.
    - c.** A delineation of all prohibitive and precautionary slope areas on the lot(s), the size of each area identified, and a calculation of the total area of prohibitive and precautionary slopes on the parcel.
    - d.** The limits and area calculations of proposed land areas within the precautionary slope areas that will be subject to clearing of vegetation and grading.
    - e.** The location of all existing and proposed:
      - i.** Structures, including the area of any proposed expansions to an existing structure
      - ii.** Driveways and parking areas and a profile showing the slope of any proposed driveway that will cross a precautionary or prohibitive slope area
  - iii.** On-site wells and septic systems and any test pits
  - iv.** Roads and trails
  - v.** Public or private utility lines
  - vi.** Earth excavation operations
  - vii.** Ski trails, ski lift towers, and lift service roads
- f.** Any other information necessary to demonstrate compliance with this Article.

# ARTICLE 13. TELECOMMUNICATIONS OVERLAY DISTRICT

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## 13.1 GENERAL

### 13.1.1 Purpose

The purpose of the Telecommunications Overlay District is to establish general guidelines for the siting of telecommunications towers and antennas, and the removal or upgrade of abandoned or outdated facilities, in order to reduce adverse impacts such facilities may create, including impacts on aesthetics, environmentally sensitive areas, flight corridors, historically significant areas, health and safety of persons and property, and economic prosperity through protection of property values.

### 13.1.2 Applicability

- A. This Article shall apply to all telecommunications facilities within the City, with the exception of those facilities listed in **Section 13.1.3**.
- B. The Telecommunications Overlay District includes Zone 1, Zone 2, and Zone 3, which are displayed on Telecommunications Overlay Map dated March 2019. This map is adopted as an overlay to the official Zoning Map, as may be amended.
- C. Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities as defined or used elsewhere in this LDC or the City's ordinances and regulations.

### 13.1.3 Exemptions

The following shall be exempt from the requirements of the Telecommunications Overlay District.

- A. Concealed or camouflaged facilities located on property owned, leased, or otherwise controlled by the City, not including the public right-of-way. This infrastructure shall only be permitted in locations of the City delineated in **Figure 13-1** View Preservation Overlay Map. For this exemption to apply, a license or lease approved by City Council authorizing such antenna or tower shall be required.

- B. Private use residential satellite dishes, antennas for wireless Internet access, private wireless ham communication antennas, or the installation of any tower or antenna less than 70' in height that is owned and operated by a federally licensed amateur radio station operator.
- C. Telecommunications facilities placed on existing mounts, building or structures, or modifications to existing telecommunications facilities provided that the proposed facility or facilities do not meet the definition of substantial modification per NH RSA 12-K.
- D. Concealed Facilities that are located inside a building or structure and are concealed entirely from view.

### 13.1.4 Conformity

- A. All telecommunications facilities, shall be constructed, installed, and maintained in compliance with local building codes, city ordinances, as well as all applicable state and federal regulations, including the Federal Aviation Administration (FAA) and Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate towers and antennas.
- B. If federal standards regulations applying to towers and antennas are amended, the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with the revised standards and regulations within 6-months of their effective date, unless a more stringent compliance schedule is mandated by the controlling federal agency.
  - 1. Failure to bring towers and antennas into compliance with revised federal regulations shall constitute grounds for their removal at the owner's expense through execution of the posted security.

Figure 13-1 View Preservation Overlay Map



## 13.2 USE REGULATIONS

The telecommunication facilities listed in Section 13.2 are deemed to be permitted uses subject to the requirements of this Article and shall require a building permit, a telecommunications conditional use permit, and/or major site plan review.

### 13.2.1 Telecommunications Facilities within the Public Right-of-Way

Telecommunication facilities in the public-right-of-way may be subject to the issuance of a Small Wireless Facilities License from the Public Works Director or their designee and the requirements of Chapter 82 of the City Code of Ordinances.

### 13.2.2 Collocation of facilities

The placement or installation of new telecommunications facilities on existing towers or mounts may occur in any zoning district within the City provided it does not meet the definition of substantial modification as defined in NH RSA 12-K, and is subject to the issuance of a building permit only.

### 13.2.3 Modification of Existing Facilities

The replacement or alteration of an existing telecommunications facility within a previously approved equipment compound or upon a previously approved mount is allowed in all zoning districts provided it does not meet the definition of substantial modification as defined in NH RSA 12-K, and is subject to the issuance of a building permit only.

### 13.2.4 Concealed Facilities

The installation of a facility that is located inside a building or structure and is concealed entirely from view is allowed in all zoning districts and is subject to the issuance of a building permit only.

### 13.2.5 Camouflaged telecommunication facilities

The installation of new ground-mounted towers and antennas, if camouflaged, or a substantial modification to an existing tower or mount that would maintain its camouflage, may occur within Zone 2 or Zone 3. All camouflaged facilities shall require the issuance of a building permit, conditional use permit, and major site plan review.

### 13.2.6 Ground-Mounted Towers & Antennas

The installation of new ground-mounted towers and antennas which are not camouflaged, or a substantial modification to an existing tower or mount that is not camouflaged, is not allowed in Zone 1 or Zone 2 of the Telecommunications Overlay District, or in a designated historic district and shall require the issuance of a building permit, telecommunications conditional use permit, and major site plan review.

## 13.3 DIMENSIONAL REQUIREMENTS

The dimensional requirements for telecommunications facilities subject to this Article shall be as stated in **Table 13-2**.

## 13.4 DESIGN STANDARDS

### 13.4.1 Aesthetic Standards

With the exception of those that are concealed entirely from public view, telecommunication facilities shall not stand out in terms of color and materials, scale, height, mass or proportion against a contrasting background. Specifically, telecommunication facilities shall comply with the following.

- A. The relative height, mass or proportion of telecommunications facilities shall be compatible with the building or structure it is located on or the immediate surroundings.
- B. If installed on a historic structure, telecommunications facilities shall not alter character defining features, distinctive construction methods, or original historic materials of the structure and shall be fully reversible.

**Table 13-1: Permitted Telecommunications Facility Types**

Facility Type		Zone 1	Zone 2	Zone 3	Historic District
Structure Mounted <i>(Mounted on an existing building or structure other than a tower)</i>	Collocation/Modification	P	P	P	P
	Fully Concealed	P	P	P	P
	Substantial Modification	CUP + SPR	CUP + SPR	CUP + SPR	CUP + SPR
Ground Mounted <i>(Mounted to the ground or a tower constructed primarily for the purpose of supporting telecommunications facilities)</i>	Collocation/Modification	P	P	P	P
	Camouflaged (New)	-	CUP + SPR	CUP + SPR	-
	Non-Camouflaged (New)	-	-	CUP + SPR	-

"P" = Permitted, subject to building permit  
 "CUP" = Requires Conditional Use Permit

" - " = Facility Not Permitted  
 "SPR" = Requires Site Plan Review

**Table 13-2: Telecommunications Facilities Dimensional Requirements**

**Structure-Mounted Facilities (Excluding Public Right-of-Way):**

**Height<sup>1</sup>** Shall not increase the height of an existing building or structure, including utility poles, guyed towers, lattice towers, and masts, by more than 10% or more than 20-ft, whichever is greater.

Shall not be placed on any structure less than 30-ft in height.

**Setbacks** Shall comply with setbacks in the underlying zoning district where the facility is installed.

Shall not increase any nonconformity with respect to setbacks.

**Ground-Mounted Facilities (Excluding Public Right-of-Way):**

**Height** Shall not project higher than 20-ft above the average tree crown height within a 150-ft radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greater. A licensed landscape architect, certified arborist or forester shall determine the average tree crown height.

**Setbacks** Shall comply with setbacks in the underlying zoning district where the facility is installed. These setbacks apply to the facility as well as all accessory equipment, structures, and/or fences greater than 6-ft high associated with the facility.

Towers shall be set back a distance equal to 125% of the tower height from any off-site residential structure or public right-of-way.

**Fall Zone<sup>2</sup>** Shall maintain a minimum distance, which is equal to or greater than the fall zone, from the base of the facility to any property line, public road, residential dwelling, business use, institutional use, or public recreation area.

Fall zones may cross property lines if an easement is obtained from affected property owners.

<sup>1</sup>The height of towers shall be determined by measuring the vertical distance from the tower or telecommunication facility's lowest point of contact with the ground to the highest point of the tower, including all antennas or other attachments. Antennas on top of the tower may be added provided the total height of the tower and antennas does not project higher than 20-ft above the average crown height.

<sup>2</sup>Fall zone is defined as the area within which there is a potential hazard from falling debris, such as ice, which encompasses a circle with a diameter equal to twice the height of the telecommunication facility as measured on the ground from the base of the facility.

- C.** Telecommunications facilities shall either maintain a non-reflective finish (subject to any applicable FAA standards), be painted a neutral color, or be painted a color that is closely compatible with or identical to the color and finish of the surrounding environment, buildings, structures, etc.
- D.** If mounted on an existing structure, telecommunications facilities shall be painted a color that is identical to or closely resembles that of the supporting structure. For the purposes of this Article, "existing structure" means a structure that was lawfully erected, installed, or constructed for purposes other than the siting of telecommunication facilities at least 2-years prior to the date of application for a building permit and conditional use permit to site telecommunication facilities thereon.
- E.** Structure-mounted facilities shall blend or match the design features and materials of the existing structure as closely as possible.
- F.** Antennas shall be narrow in profile.
- G.** New ground-mounted towers and antennas or reconstructed towers and antennas shall be of a lattice, guyed, or mast type mount, unless an

alternative design is approved by the Planning Board.

- H. Monopoles are prohibited.

#### 13.4.2 Screening

- A. Telecommunication facilities mounted on the roof of a building shall be concealed behind existing architectural features of the building or shall be located so that it is not visible from public rights-of-way.
- B. All mechanical and electrical equipment associated with any facility located inside a structure or building, shall be concealed inside the structure or building or shall be shielded from view from public rights-of-way.
- C. All equipment for a camouflaged facility shall be in an underground vault.
- D. All equipment for new ground mounted towers and antennas shall be in an underground vault or equipment shelter that is designed to be of an appearance and design consistent with the buildings in the area of the facility or camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building.

#### 13.4.3 Security Fencing

New ground-mounted facilities shall be enclosed by security fencing not less than 6-ft high or equipped with an appropriate antilimbing device, if applicable. The Planning Board may determine whether security fencing or a barrier is required for other facility types.

#### 13.4.4 Driveways

- A. Existing entrances and driveways shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.
- B. New driveways shall not exceed 12-ft in width and shall comply with all applicable driveway or street access regulations in this LDC.

#### 13.4.5 Lighting

- A. Telecommunication Facilities shall not be illuminated by artificial means with the exception of aviation caution lights shielded from sight from the ground or lights required by the FAA or other federal or state authority.
- B. Lighting of equipment structures and any other facilities on-site shall be fully shielded.
- C. Footcandle measurements at the property line shall be 0-fc.

#### 13.4.6 Signage

No signs are allowed except for warning or equipment signs in compliance with **Article 10**.

## 13.5 CONDITIONAL USE PERMIT

### 13.5.1 General

All applicants for telecommunications conditional use permits and site plan review for proposed telecommunications facilities, as required under this Article, shall apply to the Planning Board following the procedures in **Article 25**. In addition to the application requirements set forth in **Article 25**, applicants shall also be required to submit information addressing the standards included in **Section 13.5.2**, **Section 13.5.3**, and **Section 13.5.4**.

### 13.5.2 Burden of Proof Policy

- A.** Only after demonstrating to the Planning Board that it is not feasible to conceal telecommunication facilities inside an existing structure or building; collocate facilities at existing ground-mounted telecommunication towers or antennas; install or mount telecommunication facilities onto existing structures or buildings; or construct camouflaged telecommunication facilities, may an applicant consider or propose a new ground-mounted telecommunications facility that is not camouflaged.
- B.** When considering a new ground-mounted facility, the applicant shall have the burden of proving to the Planning Board that none of the options listed above are possible, and shall take all of the following actions.
  - 1.** Submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a telecommunication facility. If the Planning Board informs the applicant that additional existing structures or buildings may be satisfactory, the applicant shall contact the property owners of those structures or buildings.
  - 2.** Shall provide to the Planning Board copies of all letters of inquiry made to owners of existing structures or buildings and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered return receipt requested forms from the United

States Postal Service shall be provided for each owner of the existing structure or building that was contacted.

- 3.** If the applicant claims that a structure or building is not capable of physically supporting a telecommunication facility, a NH licensed engineer shall certify this claim to the Planning Board. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the telecommunication facility without unreasonable costs.

### 13.5.3 Review Criteria

In the review of telecommunications conditional use permit applications, the applicant and the Planning Board shall address all applicable design standards as provided for in **Section 13.4**, the Site Development Standards in **Article 20**, and the following additional factors:

- A.** Visual impacts of the proposed facility on viewsheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- B.** Availability of alternative facility types and sites.
- C.** Height of proposed tower or other structures.
  - 1.** The Planning Board shall have the final authority to increase the allowable height of all new, altered, or reconstructed telecommunications facilities and towers based on site conditions in non-residential areas, provided the following conditions are met.
    - a.** If the structure is readily visible to residential properties, the facility/structure does not exceed a height of 75-ft.
    - b.** If the structure is not readily visible to residential properties, the facility/structure does not exceed a height of 125-ft.

### 13.5.4 Conditional Use Permit Application Materials

- A.** Each applicant requesting a telecommunications conditional use permit under this Article shall submit all submission requirements for major site plan review, as outlined in **Article 25**, as well as a scaled elevation view, topography, existing vegetation and tree crown coverage, radio frequency coverage (RFC), height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses up to 200-ft away from the property line, and any other information deemed necessary by the Planning Board to establish compliance with this Article.
- B.** Applications for new ground-mounted towers or antennas shall submit the following additional information as part of the telecommunications conditional use permit request:
  - 1.** An inventory and map of all existing ground-mounted towers and antennas that are located within the City's jurisdiction and those within 2-miles of the border thereof, including specific information about the location, height, as well as economic and technological feasibility for collocation on the inventoried towers and/or antennas.
  - 2.** Written evidence demonstrating that no existing ground-mounted tower or antenna can accommodate the applicant's proposed telecommunication facilities. This evidence can consist of substantial evidence that:
    - a.** No existing ground-mounted towers or antennas are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
    - b.** Existing ground-mounted towers or antennas are not of sufficient height to meet the applicant's engineering requirements.
  - c.** The existing ground-mounted towers or antennas do not have sufficient structural strength to support the applicant's proposed telecommunication facility's related equipment.
  - d.** The applicant's proposed telecommunication facilities would cause electromagnetic interference with the telecommunication facilities located on the existing ground-mounted towers or antennas, and/or that the telecommunication facilities located on the existing towers or antennas would cause interference with the applicant's proposed telecommunication facilities.
  - e.** The fees, costs, or contractual provisions required by the property owner in order to share the existing ground-mounted tower or antenna are unreasonable. Costs exceeding new ground-mounted tower development are presumed to be unreasonable.
  - f.** The applicant can demonstrate other limiting factors that render existing ground-mounted towers and antennas unsuitable.
- 3.** An agreement with the City that allows for the maximum allowance of collocation upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement shall be grounds for a denial.
- 4.** The applicant shall submit the engineering information detailing the size and coverage required for the facility location.



**13.5.5 Conditional Use Permit Waiver**

Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the criteria set forth in this Article, it may approve waivers to the requirements of this Article.

**A. Waiver Criteria**

The Planning Board shall not approve any waiver unless a majority of those present and voting find that all of the following apply.

- 1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
- 2. The waiver will not, in any manner, vary the provisions of this Article, the City Comprehensive Master Plan, or official City maps.
- 3. Such waiver will substantially secure the objectives and requirements of this Article.
- 4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include but not be limited to the following.
  - a. Topography and other site features
  - b. Availability of alternative site locations
  - c. Geographic location of the property
  - d. Size/magnitude of the project being evaluated and availability of collocation
- 5. In no case shall ground-mounted towers, ground-mounted camouflaged or alternative towers, or preexisting reconstructed ground-mounted towers or antennas be greater than 125-ft in height.

**13.6 MAINTENANCE, MONITORING, & SECURITY**

**13.6.1 Maintenance**

The owner of an approved telecommunication facility shall maintain the facility in good condition. Such maintenance shall include but shall not be limited to painting, structural integrity of the mount and security fencing, and maintenance of the buffer areas and landscaping.

**13.6.2 Monitoring**

As part of the issuance of a building permit or telecommunications conditional use permit, the property owner agrees that the City may enter the subject property to inspect the telecommunication facility or obtain Radio Frequency Radiation (RFR) or noise measurements at the expense of the owner of the facility. The City shall provide reasonable written notice to the property owner and the owner of the facility and provide an opportunity for them to accompany city representatives when the inspection and/or measurements are conducted.

**13.6.3 Security for Removal**

- A. Recognizing the extremely hazardous situation presented by abandoned and unmonitored telecommunication facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunication facilities, if a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with **Section 13.7.**
- B. The amount of the security shall be based upon the removal cost, plus 20%, provided by the applicant and certified by a NH licensed engineer. Furthermore, the owner shall submit as part of the issuance of a building permit proof of adequate insurance covering accident or damage.



## 13.7 ABANDONMENT

### 13.7.1 Notification

At such time that an owner or carrier plans to abandon or discontinue operation of a telecommunication facility, such owner or carrier shall notify the City Manager by Certified Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30-days prior to abandonment or discontinuation of operations. If an owner or carrier fails to give such notice, the telecommunication facility shall be considered abandoned upon such discontinuation of operations.

### 13.7.2 Removal

- A. Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the facility within 90-days from the date of abandonment or discontinuation of use. The term “physically remove” shall include but not be limited to the following.
  - 1. Removal of antennas, mount, equipment shelters and security fencing as applicable from the subject property.
  - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - 3. Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain as finished.

### 13.7.3 Failure to Remove

- A. If the owner of the facility does not remove the facility upon order of the City's Building and Health Official, then said official shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment.
- B. The owner of the facility shall dismantle and remove the facility within 90-days of receipt of the declaration of abandonment. If the abandoned facility is not removed within 90-days, the City may execute the security to pay for removal.

- C. If there are 2 or more users of a single tower or antenna, this subsection shall not become effective until all users cease using the tower or antenna.

# ARTICLE 14. SUSTAINABLE ENERGY EFFICIENT DEVELOPMENT (SEED) INCENTIVE DISTRICT

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## 14.1 GENERAL

### 14.1.1 Authority

The Sustainable Energy Efficient Development (SEED) Overlay District is adopted as an innovative land use control pursuant to the authority granted by NH RSA 674:16 and NH RSA 674:21, and procedurally in accordance with NH RSA 675:1,II.

### 14.1.2 Purpose

The purpose of the SEED Overlay District is to promote smart growth, mixed land uses and green development, and to provide an opportunity for incentives to guide development and redevelopment closer to the City's Downtown Core, where adequate infrastructure and services can accommodate growth. This purpose will be accomplished by:

- A. Providing the option to property owners in this Overlay District to voluntarily construct a green building in exchange for zoning incentives, such as alternative permitted densities and principal uses;
- B. Encouraging new construction and alterations to existing buildings, structures and sites within the Overlay District that reflect the City's distinctive architectural identity, unique character, and prevailing scale;
- C. Discouraging sprawling, unplanned development that can result in unwise use of the City's remaining open space and rural lands; and,
- D. Providing the opportunities to expand the City's tax base through encouraging redevelopment and smart growth.

## 14.2 SEED OVERLAY DISTRICT MAP

- A. The boundaries of the SEED Overlay District are as shown on **Figure 14-1** "Sustainable Energy Efficient Development Overlay District" dated **September 22, 2020**, as the areas identified as SEED A and SEED B. **Figure 14-1** is hereby adopted in accordance with NH RSA 674:20 as an overlay district to the Official Zoning Map of the City of Keene.

## 14.3 ELIGIBLE PROJECTS

### 14.3.1 Eligible Projects

To be eligible for the incentives described in **Section 14.4**, a property owner, or their authorized agent, shall demonstrate that a proposed development or redevelopment project will obtain, at a minimum, green building pre-certification status for at least one of the green building rating systems in **Table 14-1**.

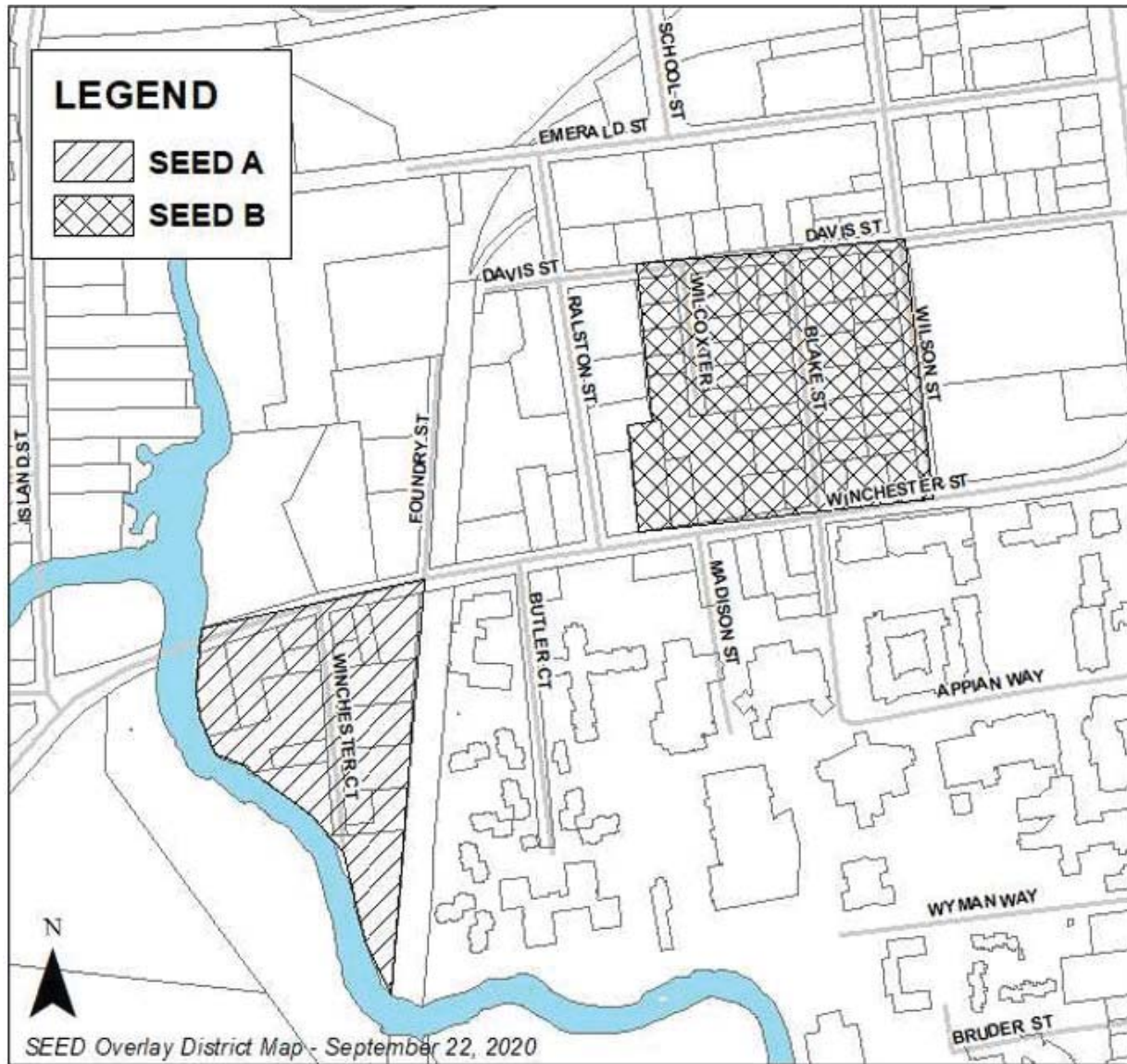
**Table 14-1: Eligible Green Building Rating Systems**

Green Building Rating System	Minimum Rating Required for SEED Incentive
LEED®	LEED® Silver
Green Globes®	Two Green Globes®
National Green Building Standard (ICC 700)	Silver - Green Building and/or Two Stars - Site Design and Development
International Green Construction Code	Minimum compliance with the Code and compliance with the adopted levels in Table 102.4.12

### 14.3.2 Determination of Eligibility

- A. Applicants seeking to qualify for the incentives described in **Section 14.4**, shall submit to the Zoning Administrator a completed application, including the following materials.
  - 1. A written letter of intent describing the proposed project including the green building rating system and level of attainment proposed for the project; what strategies will be employed to obtain a green building certification; which SEED incentives in **Section 14.4** are sought; and, any other information deemed reasonably

Figure 14-1 Sustainable Energy Efficient Development Overlay District



necessary by the Zoning Administrator to allow for an informed decision regarding the applicant's ability to comply with the selected rating system.

2. The name of a third-party reviewer, chosen from a listing of third-party reviewers provided by the Community Development Department, who shall review and make a determination of the project's ability to achieve the minimum green building pre-certification status for one of the rating systems listed in **Table 14-1**.

- a. The applicant can provide a nomination for the third-party reviewer; however, selection of the third-party reviewer shall be at the sole discretion of the Zoning Administrator, or their designee.
- b. The applicant shall be responsible for all costs and expenses associated with the third-party reviewer, and shall pay such expenses at the time of filing the application.

3. A statement that releases the City of Keene, its officers, agents and servants from any liability if the applicant is unsuccessful in their efforts to attain green building certification or equivalent, as identified in this Article.
  4. A completed application form signed by the property owner, or their authorized agent, and the applicant, if different than the property owner.
  5. The application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.
- B.** Following submittal of a completed application, the Zoning Administrator shall submit the letter of intent and associated materials to the selected third-party reviewer.
1. Within 35 business days, the third-party reviewer shall make a determination of the project's ability to achieve a minimum green building pre-certification status as required in **Section 14.3.1.**
- C.** Within 10 business days following receipt of the third-party reviewer's results and commentary, the Zoning Administrator shall determine in writing if the project is or is not eligible for the SEED Overlay District incentives in **Section 14.4.**
1. If the Zoning Administrator determines that a project is eligible for the SEED Overlay District incentives, the applicant may not change the proposed green building rating system without first obtaining approval from the Zoning Administrator. The Zoning Administrator may require that the proposed change(s) be submitted to and reviewed by a third-party reviewer, at the expense of the applicant, as provided for in **Section 14.3.2.A.2** of this Article.
- D.** Upon application for a Building Permit, the applicant shall submit the review completed by the third-party reviewer and any acceptances or certifications from green building rating agencies to demonstrate compliance with the proposed green building rating system or code.
- E.** Prior to the issuance of a Certificate of Occupancy, the Zoning Administrator shall receive certification or documentation from the qualified third-party reviewer that the as-built project has achieved the proposed rating system. No Certificate of Occupancy or Temporary Certificate of Occupancy shall be issued without demonstrated evidence supplied by the applicant and third-party reviewer that the project has achieved the proposed level of green building certification.

**14.4 SEED OVERLAY DISTRICT INCENTIVES**

**14.4.2 SEED A Incentives**

**A. Permitted Uses.** In addition to the principal uses permitted in the underlying zoning district, the following uses shall be permitted on a lot in the area designated SEED A, when a proposed development has received a finding of eligibility for SEED incentives.

- 1. More than one permitted principal use shall be allowed on a lot.
- 2. All principal uses permitted in the Downtown-Core (DT-C) District.

**B. Dimensional Incentives.** For eligible projects in areas designated as SEED A, the dimensional standards included below may be permitted as an alternative to the same standard specified in the underlying zoning district. Any dimensional requirements specified for the underlying zoning district in this LDC but not listed below shall still apply.

- 1. **Building Height.** The maximum building height shall be 6-stories or 7-stories with first floor parking.
- 2. **Minimum Lot Size.** There is no minimum lot size.
- 3. **Setbacks.** The front, side, and rear setbacks shall be 0-ft.

**14.4.3. SEED B Incentives**

**A. Use Incentives.** In addition to the principal uses permitted in the underlying zoning district, the following uses shall be permitted on a lot in the area designated as SEED B, when a proposed development has received a finding of eligibility for SEED incentives.

- 1. More than one permitted principal use shall be allowed on a lot.
- 2. Banking or Lending Institution
- 3. Clinic
- 4. Day Care Center
- 5. Parking Lot (Principal Use)

**B. Dimensional Incentives.** For eligible projects in areas designated as SEED B, the dimensional standards included below may be permitted as an alternative to the same standard specified in the underlying zoning district. Any dimensional requirements specified for the underlying zoning district in this LDC but not listed below shall still apply.

- 1. **Building Height.** The maximum building height shall be 4 stories.
- 2. **Minimum Lot Size Per Dwelling Unit.** The minimum lot size for one dwelling unit shall be 6,000 sf. There is no additional lot area required for additional dwelling units.

**14.5 SCREENING REQUIREMENTS**

Within SEED Area B, any structure that has been found eligible for SEED Overlay District incentives pursuant to **Section 14.3** shall be required to construct an architectural or vegetative screen to lessen the impact of noise, dust, debris, and motor vehicle headlight glare on abutting properties. Such screen shall consist of the following.

- A.** One 3-in caliper deciduous tree every 20-linear feet, and a solid fence that is between 4-ft and 6-ft high, which are installed along the length of the property line(s) adjacent to abutting properties; or,
- B.** An evergreen hedge extending along the property line(s) adjacent to abutting properties, with a planting height of at least 3-ft and a mature height of at least 4-ft; or,
- C.** Any combination of the above.



# ARTICLE 15. CONGREGATE LIVING & SOCIAL SERVICES CONDITIONAL USE PERMIT

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## 15.1 APPLICABILITY

Any change of use or new occupancy of any building or portion thereof to the following congregate living or social service uses, as defined in **Section 8.3.4** of this LDC, shall require a congregate living and social services conditional use permit issued by the Planning Board in accordance with this Article.

1. Drug Treatment Clinic
2. Group Home, Large
3. Group Home, Small
4. Fraternity/Sorority
5. Group Resource Center
6. Homeless Shelter
7. Lodginghouse
8. Residential Care Facility
9. Residential Drug/Alcohol Treatment Facility

## 15.2 REVIEW CRITERIA

The Planning Board review of applications for a congregate living and social services conditional use permit shall consider the potential impacts of such use on adjacent property and the surrounding neighborhood, and shall carefully consider impacts on the public health, safety and welfare, including that of the client population being served by such uses (residents or those seeking care or assistance).

The Planning Board, in evaluating whether a proposed congregate living or social service use should be permitted on a specific lot, shall make a finding that the use as proposed by the applicant meets each of the following criteria.

- A. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all the applicable standards in this LDC for the particular use in **Section 8.3.4**.
- B. The proposed use will be established, maintained, and operated so as not to endanger the public health, safety, or welfare.

- C. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property. In addition, any parking lots, outdoor activity area, or waiting areas associated with the use shall be adequately screened from adjacent properties and from public rights-of-way.
- D. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.
- E. The proposed use will not place an excessive burden on public infrastructure, facilities, services, or utilities.
- F. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.
- G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.
- H. The proposed use will be located in proximity to pedestrian facilities (e.g. multiuse trails and sidewalks), public transportation, or offer transportation options to its client population.

## 15.3 CONDITIONS

- A. The Planning Board may impose conditions on a congregate living and social services conditional use permit relating to the development, design, or operation of the use to the extent the Planning Board concludes such conditions are necessary to minimize any adverse effect of the proposed use on adjoining properties, and to preserve the intent of the standards in this LDC.
- B. In the event that the Planning Board decides to approve a congregate living and social services conditional use permit, the Planning Board may impose conditions and restrictions as are directly related and incidental to the proposed use. Such conditions may address limits on

location, scale, intensity, design, lighting, site and building maintenance, security and safety measures, signs, hours of operations, provisions for recreation and open space, buffers and screening, and other performance standards. Such conditions may include, but shall not be limited to, the following.

1. Setbacks larger than the minimums required by the Zoning Regulations.
  2. Landscaping and/or screening of the premises from the street or adjacent property in excess of the minimum requirements of the Zoning Regulations.
  3. Modification of the design of any building, structure or site feature involved in the proposed use.
  4. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of the Zoning Regulations.
  5. Limitation of the number of occupants or employees upon the premises and restrictions of the method of operation, the time of operation and use, and the size or extent of the facilities.
  6. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
  7. Off-street parking spaces in excess of the minimum requirements of the Zoning Regulations.
  8. Regulation of the number, size, and/or lighting of signs more stringent than the requirements of the Zoning Regulations.
- C. All congregate living and social services conditional use permits shall be conditioned upon the issuance and annual renewal of a congregate living and social services license, as described in Chapter 46 of the City of Keene Code of Ordinances. Failure to procure and maintain an active congregate living and social services license shall constitute a violation of the conditions of the congregate living and social services conditional use permit, which shall be

enforced through the provisions established in **Article 27** of this LDC.

## 15.4 SUBMITTAL MATERIALS

Applicants for a congregate living and social services conditional use permit shall submit a completed application to the Community Development Department in accordance with the submission and procedural requirements for conditional use permits as set forth in **Article 25**, as they may be amended. In addition to the application submission requirements specified in **Article 25** for conditional use permits, a completed application form for a congregate living and social services conditional use permit shall include the following materials.

- A. A written narrative describing the proposed use and any work proposed associated with such use, including, but not limited to, the following information.
1. The size and intensity of the use, including information about: the estimated number of occupants, including residents, clients, staff, visitors, etc.; hours of operation; size and scale of existing and proposed buildings or structures on the site; and, size of outdoor areas associated with the use.
  2. A description of any proposed development or redevelopment including, but not limited to: the construction of new buildings or structures or additions to buildings or structures; interior renovations; installation of parking areas or paved surfaces and associated screening; installation of fences or walls; and, change of use.
  3. A description of the physical and architectural characteristics of the site and the surrounding neighborhood.
  4. A description of how the site and/or use is designed to address the safety and security of its client population.
  5. A description of the size and location of indoor and/or outdoor waiting or intake areas, if applicable.
  6. An analysis of estimated traffic generation

associated with the proposed use utilizing the most current edition of the Institute of Transportation Engineers (ITE) Traffic Generation Manual or data provided by a NH licensed traffic engineer.

- 7.** The estimated parking demand for the proposed use and the number of parking spaces to be provided on-site.
  - 8.** A description of the staffing of the facility, including the number of on-site managers, if any.
  - 9.** The proximity of the facility to other known congregate living and social service uses within 750-ft (measured from the property line).
  - 10.** For congregate living uses, the average length of stay for residents/occupants of the facility.
  - 11.** A description of the services provided to the clients or residents of the facility, including any support or personal care services provided on- or off-site.
- B.** Documentation of all required state or federal licenses, permits, and certifications.
- C.** The applicant for a congregate living and social services conditional use permit shall submit an Operations and Management Plan that shall become binding upon approval of the conditional use permit. This Plan shall be based on industry standard "Best Management Practices", and, at a minimum, shall address the following.
- 1.** A security plan that includes provisions for onsite security including lighting, security cameras, and/or other measures appropriate to provide for adequate health and safety of clients and management.
  - 2.** A life safety plan that demonstrates compliance with the State Minimum Building Code and Fire Codes.
  - 3.** Staff training and procedures plan
  - 4.** Health and safety plan
  - 5.** An emergency response plan that establishes procedures for addressing emergency situations and for coordinating with local emergency service providers.
- 6.** A neighborhood relations plan that includes provisions for communicating with adjacent property owners and the City of Keene, including the Keene Police Department.
- 7.** Building and site maintenance procedures
- D.** In addition to the application materials listed above, homeless shelters shall be required to address the following as part of a congregate living and social services use conditional use permit application.
- 1.** Rules of conduct and registration system for guests, including procedures for screening registered sex offenders and for separating individual guests and families with children.
  - 2.** Policies and procedures for denying access to the homeless shelter when at maximum capacity or the determination that a person is unsuited for the facility, and how the immediate sheltering needs of individuals who may be turned away from the shelter will be handled.

# ARTICLE 16. SOLAR ENERGY SYSTEM CONDITIONAL USE PERMIT

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## 16.1 APPLICABILITY

The installation or operation of any medium-scale or large-scale ground-mounted solar energy system, as defined in **Section 8.3.7.B** and **Section 8.3.7.C** respectively, shall require a solar energy system conditional use permit issued by the Planning Board.

## 16.2 REVIEW CRITERIA

In addition to the Site Development Standards in **Article 20** and the specific use standards in **Section 8.3.7.B** and **Section 8.3.7.C**, the Planning Board shall consider the following criteria when deciding whether to grant a solar energy system conditional use permit.

### 16.2.1 Siting

- A. Large-scale ground-mounted solar energy systems shall be located on parcels no less than 5-acres in size
- B. The solar footprint of ground-mounted solar energy systems shall not exceed 20 contiguous acres.

### 16.2.2 Height

Ground-mounted solar energy systems shall not exceed 15', as measured from the ground to the highest point of the system, when oriented at maximum design tilt.

### 16.2.3 Setbacks

A minimum setback distance of 50-ft from all exterior property lines of the system and existing public rights-of-way shall be required for medium-scale and large-scale ground-mounted solar energy systems.

### 16.2.4 Lot Coverage

The solar land coverage of medium-scale and large-scale ground mounted solar energy systems shall not exceed 70% of the lot upon which they are installed.

### 16.2.5 Visual Buffer

- A. Medium-scale and large-scale ground-mounted solar energy systems shall be sited in a manner

to reasonably minimize the view of the system from surrounding properties and public rights of way.

- B. The visual impact of medium-scale and large-scale ground-mounted solar energy systems, associated equipment, and any extensive or imposing perimeter fencing on adjacent parcels and public rights-of-way shall be mitigated through the preservation of existing vegetation and/or through the installation of a visual buffer approved by the Planning Board.
- C. If landscaping is used to provide a visual buffer, it shall:
  - 1. Provide year-round screening of the ground-mounted solar energy system and associated equipment;
  - 2. Be composed of native plant species; and,
  - 3. Be maintained for the full term that the ground-mounted solar energy system is located on the site.

### 16.2.6 Environmental

- A. Clearing of existing trees and vegetation shall be limited to what is necessary for the installation and operation of the ground-mounted solar energy system.
- B. The design of ground-mounted solar energy systems shall include sufficient distance, which, at a minimum, will be the width of a single solar collector panel, between rows of solar collector panels to allow for capture of rainfall and growth of vegetation.

### 16.2.7 Noise & Glare

- A. The solar energy system shall be designed and/or sited to minimize the adverse impacts of glint or glare on adjacent properties or roadways.
- B. Inverters shall be fully enclosed.

### 16.2.8 Security

- A. Perimeter and/or security fencing shall have a maximum height of 8-ft.

- B. On-site lighting shall be installed for security and safety requirements only. All lighting shall comply with the Lighting Site Development Standard in **Article 20.**

### 16.2.9 Utility interconnection

All on-site power and communication lines within the solar footprint of the ground-mounted solar energy system shall be buried underground, unless the owner/operator is able to demonstrate the presence of technical or physical constraints (e.g. shallow bedrock, watercourses, etc.) that may interfere with the ability to bury lines in certain areas.

## 16.3 DECOMMISSIONING & SITE RESTORATION

- A. The owner or operator of large-scale ground-mounted solar energy system shall submit a decommissioning plan to the Community Development Department as part of their application for a solar energy system conditional use permit to ensure the proper removal of the system and associated equipment upon the end of the project life or after their useful life.
- B. The owner or operator shall decommission the solar panels in the event they are not in use for 12 consecutive months. The plan shall include provisions for the removal of all structures, foundations, and electrical transmission components (including below grade components), and the restoration of soil and vegetation within 6-months of abandonment.
- C. The Planning Board may require that the owner or operator post a bond, letter of credit, or establish an escrow account, including an inflationary escalator, in an amount deemed acceptable by the Community Development Director, to ensure proper decommissioning.

## 16.4 CONDITIONAL USE PERMIT

### 16.4.1 Application Materials

All applications for a solar energy system conditional use permit shall be made to the Planning Board in accordance with the submission and procedural requirements for conditional use permits set forth in **Article 25**, as they may be amended, and shall also include the following materials and information.

- A. A detailed plan set certified by a NH licensed engineer that depicts the following information.
  - 1. Existing site conditions and features including but not limited to: topography, surface waters, woodland areas, 100-year floodplain, steep slopes, soils, property boundaries, zoning district boundaries and setbacks, existing structures and roads, historical features, etc.
  - 2. Proposed site conditions including but not limited to: the footprint of solar energy system equipment and components, as well as any affiliated installations and structures, access points, drive/access aisles, security features, and fencing.
  - 3. The limits of any land clearing and/or grading required for the installation and operation of the solar energy system, as well as any erosion and sediment control measures to be installed during or after construction.
  - 4. A landscape plan that includes the location of existing vegetation to be preserved; details on the location, dimensions, and composition of any visual buffers on site; and information on the proposed location, number, type and size (at planting and maturity) of any replacement or proposed vegetation and ground cover on the site.
- B. Elevation drawings, drawn to scale, of the ground-mounted solar energy system.
- C. A drainage report certified by a NH licensed engineer.

- D. Manufacturer's specifications for all proposed equipment.
- E. A statement detailing potential significant glare onto abutting structures and roadways estimating the interaction of sun to panel angle, time of year and visibility locations.
- F. Estimates of any equipment noise on the site based on equipment specification materials.

#### **16.4.2 Conditions of Approval**

The Planning Board may impose conditions on a solar energy system conditional use permit to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed use on adjoining properties, and to preserve the intent of the standards in this LDC.

# ARTICLE 17. ANTI-NUISANCE STANDARDS

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## 17.1 APPLICABILITY

All uses hereafter established in all zoning districts shall comply with the anti-nuisance standards of this Article. Violations of these standards in such manner or quantity as to be detrimental to or endanger the public health, safety, or welfare is hereby declared to be a public nuisance and shall be unlawful.

## 17.2 ANTI-NUISANCE STANDARDS

### 17.2.1 Erosion & Drainage

- A. No person shall perform any act or use of land in a manner that would cause substantial or avoidable erosion or alter existing patterns of natural water flow onto any adjacent property.
- B. No increased ground surface drainage runoff shall be permitted to occur as a result of any development, in a manner that permits such increased runoff to pass beyond the property lines of the parcel upon which such development occurs, unless such runoff is within an approved public storm drainage system or extension thereof.
- C. No disruption of the natural vegetation or ground cover, as a result of excavation, grading or opening of roads, may take place prior to approval of any necessary development permit (e.g. site plan review, subdivision, building permit, conditional use permit), with the exception of test borings or soil tests. During and after all construction, reasonable measures must be taken to stabilize exposed soil to prevent erosion.

### 17.2.2 Glare

- A. No use shall have lighting that create glare, which would impair or obstruct the vision of a driver of any motor vehicle.
- B. Exterior lights shall be shielded so as not to shine directly onto any adjacent property.

### 17.2.3 Noise & Vibration

- A. **Noise Limits.** All uses shall comply with the sound level limits in Table 17-1 for continuous and intermittent noises. Compliance with such sound level limits is to be maintained at the boundary of the property.
  - 1. Sound levels shall be measured at the boundary line of the property within which the offending noise source is located, or as close thereto as feasible, at a height of at least 4-ft above the immediate surrounding surface.
  - 2. Sounds level measurements shall be made with a Class 1 or Class 2 calibrated sound level meter utilizing the A-weighted scale and the slow meter response as specified by the American National Standard Institute (ANSI) standards.

**Table 17-1: Sound Level Limits**

	Daytime (7 am - 10pm)	Nighttime (10 pm - 7 am)
Residential zoning districts	60 dB(A)	50 dB(A)
All other zoning districts	70 dB(A)	55 dB(A)

- B. **Vibration.** No source of vibration or noise shall be allowed to create a nuisance or hazard from vibration that is perceptible, without the use of instruments, to a person of normal sensitivity at any location beyond the boundary of the property where the source is located.

### 17.2.4 Noxious Gases

No use shall emit any noxious gases that may endanger the health, comfort, safety, or welfare of any person, or which may have a tendency to cause injury or damage to property or vegetation.

### **17.2.5 Outdoor Storage**

Any outside storage of dismantled vehicles or vehicle parts, where permitted, shall be screened from view by an impervious fence, hedge, berm or equivalent buffer not less than 6-ft in height.



# ARTICLE 18. NONCONFORMITIES

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## 18.1 GENERAL

### 18.1.1 Authority to Continue

- A. Any use, structure, or lot that legally existed as a nonconformity prior to or that has become nonconforming as of the effective date of the Zoning Regulations (**Articles 2 through 18** of this LDC), or any subsequent amendments, may continue as long as the nonconformity remains otherwise lawful and complies with the provisions of this Article.
- B. Any rights conferred upon a nonconformity run with the property and are not affected by changes in tenancy or ownership.
- C. Any use, structure, or lot that was not legally nonconforming prior to the effective date of these Zoning Regulations remains illegal if it does not conform to the provisions of these Zoning Regulations.

### 18.1.2 Proof of Nonconformity

- A. The property owner has the burden of proving the existence of a legally existing non-conformity.
- B. When applying for any permit or approval when there is a nonconformity present, the applicant shall be required to submit evidence of a prior permit or other documentation showing that the nonconformity legally existed prior to the date on which it became nonconforming.

### 18.1.3 Determinations of Nonconformity

If there is a question as to whether a nonconformity exists, the matter shall be decided by the Zoning Administrator with a written interpretation in accordance with **Section 25.9** of this LDC.

### 18.1.4 Relationship to Other Regulations

All nonconforming uses, structures, and lots shall not be exempt from complying with applicable federal, state and local requirements, including, but not limited to, licensing, health, safety, and building and fire code requirements.

## 18.2 NONCONFORMING USES

### 18.2.1 Description

A nonconforming use is the use of a structure or land that at one time was a permitted use within a zoning district but as a result of subsequent amendments to the Zoning Regulations, is no longer allowed.

### 18.2.2 Enlargement or Expansion

- A. A nonconforming use of a structure or land may be expanded and enlarged, provided such enlargement or expansion does not violate any of the basic zone dimensional requirements of the zoning district in which it is located, and the property owner has obtained approval from the Zoning Board of Adjustment in accordance with **Section 25.7** of this LDC.
- B. In determining whether to grant approval for an expansion or enlargement of a nonconforming use, the Zoning Board of Adjustment shall find that the following conditions have been met.
  - 1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.
  - 2. There will be no nuisance or serious hazard to vehicles or pedestrians.
  - 3. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

### 18.2.3 Alteration

The structure containing the nonconforming use may be altered only if the alterations constitute ordinary repairs or maintenance or are designed to eliminate a nonconformity, provided it will not create any new nonconformity or increase the area or intensity of a nonconforming use.

### 18.2.4 Change of Use

A legally nonconforming use shall not be changed to a different nonconforming use.

### 18.2.5 Discontinuation or Abandonment

- A. If a nonconforming use is discontinued for a continuous period of at least 1-year it shall be deemed abandoned when:
  - 1. The intent of the owner to discontinue the use is apparent, as evidenced by actions such as removal of characteristic equipment and furnishings of the nonconforming use from the premises; or,
  - 2. A nonconforming use is replaced by a different use.
- B. The owner of the nonconforming use has the burden of proof by a preponderance of evidence to demonstrate that the use is a continuing and definite intention.
- C. Any subsequent use or occupancy of such land or structure shall comply with all the regulations of the zoning district in which the structure or land is located.
- D. A period of discontinuance caused by acts of God or other events without contributing fault by the user are not included in calculating the length of discontinuance for this section. It is also not considered a period of discontinuance when a use is closed for renovations in conjunction with a lawfully issued building permit.

#### 18.3.2.6 Dwelling Units

Notwithstanding **Section 18.2.5**, a dwelling unit that is nonconforming solely because of zone dimensional requirements in the High Density and Medium Density zoning districts shall not be considered abandoned if not rented or leased for a time period, provided that the facilities required for a separate dwelling unit are not removed and meet the requirements of the City's building and housing codes set forth in Chapter 18 of the City of Keene Code of Ordinances.

### 18.2.7 Damage or Destruction

- A. When a structure containing a nonconforming use is damaged or destroyed, and the cause of damage was not by any means within the control of the owner, the nonconforming use may be reestablished provided that no new nonconformities are created and the degree of the previous nonconformity is not increased.
- B. If the structure containing the nonconforming use is a nonconforming structure, such structure shall be rebuilt, restored, repaired, or reconstructed in accordance with **Section 18.3.4**. However, if a building permit is not obtained within 1-year of the date of damage or destruction, then the nonconforming use may not be reestablished, unless it conforms to all regulations of the zoning district. The Zoning Board of Adjustment may grant a 1-year extension of this period.

## 18.3 NONCONFORMING STRUCTURES

### 18.3.1 Description

A nonconforming structure is a principal or accessory structure that was lawfully erected but because of subsequent amendments to the Zoning Regulations has been made nonconforming.

### 18.3.2 Alteration or expansion

Alteration or expansion of a structure that is nonconforming solely because of zone dimensional requirements is permitted provided that the following conditions are met.

- A. The present use, a changed use, or an additional use is permitted in the zoning district in which it is located.
- B. The alteration or expansion will not further violate setback dimensional requirements.
  - 1. Any new encroachment cannot come closer to the property line than the encroachment into the normal setback area made by the existing structure.
  - 2. The area of such new encroachment cannot exceed 50% of the total square

footage of the area of the portion of the existing structure that originally encroached on the minimum required setback.

### 18.3.3 Relocation

A nonconforming structure may not be relocated, in whole or part, to any other location on the same lot, unless such relocation would make the structure conforming.

### 18.3.4 Restoration of Damaged Structures

**A.** In the event that any nonconforming structure is damaged or destroyed without any contributing fault by the property owner or tenant, it may be repaired or rebuilt to the same size and dimension as previously existed, provided that a building permit is obtained within 1-year following the damage or destruction, unless an additional 1-year extension is granted by the Zoning Board of Adjustment.

**B.** In the event that a nonconforming structure is damaged or destroyed by the fault of the property owner or tenant, the structure as restored or repaired shall be rebuilt to comply with all requirements of the Zoning Regulations.

**C.** When a nonconforming structure is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the cause of damage was not by any means within the control of the owner, the nonconformity is not expanded, and no new nonconformity is created.

- 1.** A building permit for repairs or reconstruction shall be granted within 1-year of the date of damage or destruction, unless an additional 1-year extension is granted by the Zoning Board of Adjustment, and the building, as restored, shall not be greater in number of stories, footprint, or floor space than the original nonconforming structure.

**D.** If a building which is nonconforming solely because of dimensional requirements is damaged or destroyed to the extent of 50% or more of its replacement value, the structure may be repaired or rebuilt provided that following conditions are met.

- 1.** The replacement will not be greater in number of stories, footprint, or floor space than the original structure.
- 2.** A building permit for repairs or reconstruction is granted within 1-year of the date of damage or destruction, unless an additional 1-year extension is granted by the Zoning Board of Adjustment.
- 3.** The replacement will not violate dimensional requirements of the zoning district in which it is located any more than the original violation(s).

**E.** The replacement value of the structure shall be based on the following.

- 1.** The sale of that structure within the previous year; or, if that is not available,
- 2.** An appraisal within the last 2-years; or, if that is not available,
- 3.** The amount for which the structure was insured prior to the date of the damage or destruction; or, if that is not available,
- 4.** An alternative method determined acceptable by the Zoning Administrator.

**F.** In the event that a building permit is not obtained within 1-year of the date of damage or destruction, and no extension has been applied for or granted by the Zoning Board of Adjustment, the structure may be repaired or rebuilt only if it conforms to the provisions of the Zoning Regulations.

**18.4 NONCONFORMING LOTS**

**18.4.1 Description**

A nonconforming lot is an existing lot of record that at one time conformed to the lot dimension requirements (e.g. lot area, lot width) of the zoning district in which it is located but because of subsequent amendments to the Zoning Regulations is made nonconforming.

**18.4.2 Alteration**

No nonconforming lot may be subdivided in such a way that increases the nonconformity.

**18.4.3 Permitted Development**

Development of a nonconforming lot shall meet all applicable dimensional requirements of the zoning district it is located with the exception of any lot dimensional requirement that renders it nonconforming.



