

SECTION 100 – GENERAL

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101 Title

This chapter shall be known and cited as the "Land Use Ordinance of the Town of Windham, Maine" and will be referred to herein as "this chapter," or, "this Ordinance."

102 Purpose

- A. This chapter, adopted in accordance with a Comprehensive Plan pursuant to the provision to 30-A M.R.S.A. § 4326 et seq. is designed,
1. to encourage the most appropriate use of land throughout the municipality,
 2. to promote traffic safety; to provide safety from fire and other elements,
 3. to prevent overcrowding of real estate,
 4. to prevent housing development in unsanitary areas,
 5. to promote coordinated development,
 6. to encourage the formation of community units,
 7. to provide an allotment of land area in new developments for all the requirements of community life,
 8. to conserve natural resources, and
 9. to provide for adequate public services.
- B. This chapter does not excuse any person of the necessity of complying with other applicable laws and regulations.

103 Severability Clause

In the event that any section, subsection or any portion of this chapter shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of

this chapter; to this end, the provisions of this chapter are hereby declared to be severable.

104 Conflicts

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

105 Conformance Required

- A. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and uses of premises, in the Town of Windham shall be in conformity with the provisions of this chapter.
- B. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.
- C. Notwithstanding any other provisions of this Ordinance, any alteration of an existing building which is required in order to meet the requirements of the Americans with Disabilities Act (ADA) and/or the State Fire Code is not considered to be an enlargement or expansion of a structure, or expansion of a use, and is therefore not required to meet otherwise applicable setback requirements, provided that the Code Enforcement Officer determines that the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.
- D. All areas located within shoreland areas governed by the Shoreland Zoning Ordinance are exempt from this chapter.

106 Rules of Construction

For the purposes of this Ordinance:

- A. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual;
- B. The present tense includes the future tense;
- C. Words used in the singular include the plural and words used in the plural include the singular;
- D. The word "shall" is mandatory, the word "may" is permissive;
- E. The words "used" or "occupied" include the words "intended", "designed" or "arranged to be used or occupied";
- F. The word "dwelling" includes the word "residence";
- G. The word "lot" includes the words "plot" and "parcel";

- H. In case of any difference of meaning or implication between the text of this chapter and any map or illustration, the text shall control;
- I. Terms not defined shall have their customary dictionary meaning.

107 Amendment Procedure

After review and recommendation by the Planning Board, this chapter may be amended in accordance with the Town Charter.

108 Conditional or Contract Zoning

- A. **Authority and Purpose.** Pursuant to 30-A M.R.S.A. § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned. All contract or conditional zoning under this section shall establish rezoned areas which are compatible with the existing and permitted uses within the original zones. Nothing in this section shall authorize a rezoning, or an agreement to change or retain a zone, which is inconsistent with the Town's Comprehensive Plan.
- B. **Applicable Conditions and Restrictions.** All conditions and restrictions imposed shall relate only to the physical development and/or operation of the property. This includes, but is not limited to, the following:
 - 1. Limitations on the number and types of uses permitted;
 - 2. Restrictions on the scale and density of the development;
 - 3. Specifications for the design and layout of the buildings, structures, and other improvements;
 - 4. Schedules for commencement and completion of construction, including anticipated schedules (i.e. beginning and completion dates) for all construction phases;
 - 5. Performance guarantees securing completion and/or maintenance of public and private improvements, and guarantees against defects;
 - 6. Preservation and enhancement of open spaces and buffers, and protection of natural areas and historic sites;
 - 7. Contributions toward the provisions of municipal services required by the development; and,
 - 8. Provisions for enforcement and remedies for breach of any condition or restriction.
- C. **Submission Requirements.** All applications for conditional or contract zoning shall contain, at minimum, twenty (20) copies of the following plans and related information:
 - 1. A detailed written description of the proposal that includes the following information:
 - (a) The reason or reasons for the rezoning request;

- (b) How the proposal is in conformance with the Town's most recently adopted Comprehensive Plan;
 - (c) The current zoning district(s) applicable to the property.
 - (d) The proposed conditions or restrictions regarding the use and/or development;
 - (e) Land uses on abutting property and how they relate to the proposed use.
2. Application forms, as required;
 3. A non-refundable application fee in such amount(s) as the Town Council may from time to time establish in the fee schedule, see (*Appendix A, Fee Schedule*);
 4. A consulting and review fee in such amount as the Town Council may from time to time establish in the Fee Schedule. The fee shall be placed in escrow with the Town when the application is filed with the Planning Board. The fee shall be used by the Town in accordance with Subsection 810.C;
 5. Evidence of right, title or interest in the property proposed for contract or conditional zoning;
 6. A copy of the tax map on which the property is located.
 7. A draft contract agreement, if the Town Staff, Planning Board or Council determines it to be necessary.
- D. Rezoning Procedure. This subsection governs the procedure to be followed after the Town has received a conditional or contract zone application.
1. Town Council. All required submission material shall be submitted to the Windham Town Council at least twenty-one (21) days prior to the meeting at which the applicant wishes to be heard by the Council.
 - (a) The Town Council may choose to send the application to the Planning Board with, or without, suggested amendments.
 2. Planning Board. All required submission material shall be submitted to the Windham Planning Board at least twenty-one (21) days prior to the date at which the petitioner/property owner wishes to be heard by the Board.
 - (a) The Planner, within fourteen days, shall determine if the application is complete. An application shall not be placed on the Planning Board's agenda until it is found to be complete.
 3. Public Hearing. The Planning Board shall hold a public hearing.
 - (a) Notice Content. The public hearing notice shall contain the following information:

- (1) The date, time and place of the public hearing;
 - (2) A copy of the proposed conditions or restrictions with a map indicating the property to be rezoned.
- (b) Notification Requirements. The Planning Board shall publicize the public hearing as stated, below. Notices shall be deemed given when said notices are mailed and the failure of any petitioner and/or property owner to receive such notice shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner, and shall not invalidate any recommendation by the Planning Board on such zoning matter or any final action taken by the Town Council thereon.
 - (1) To the owner(s) of abutting property at least seven (7) days prior to the hearing;
 - (2) Posted in the municipal office at least thirteen (13) days before the hearing;
 - (3) Published, at least two (2) times, in a newspaper having general circulation in the Town of Windham. The date of the first publication must be at least seven (7) days before the hearing;
 - (4) To a public drinking water supplier if the area to be rezoned is within the supplier's source water protection area:
4. Planning Board Recommendation. The Planning Board shall use the following procedure when making a recommendation to the Council on a conditional or contract zone application.
 - (a) The Planning Board shall forward its report and recommendations on the proposal to the Town Council after the Planning Board has taken its final vote on the application.
 - (b) The Planning Board's recommendation to the Town Council shall address the proposal's conformance with the Town's comprehensive master plan.
 - (c) The Planning Board's recommendation to the Town Council shall address how the change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.
 - (d) The Planning Board's report shall include all proposed conditions and restrictions, including those recommended by the Planning Board.
- E. Town Council Approval. The Town Council may approve a Conditional or Contract Zoning if it finds that:
 1. The change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.

2. The change is consistent with the comprehensive master plan.
 - (a) In making its determination that the conditional or contract zone application is in conformance with the Town of Windham's Comprehensive Plan, the Town Council shall consider the following:
 - (1) The Planning Board's report and recommendation;
 - (2) Any proposed plot plans, site plans and/or subdivision plans reflecting the proposed use, development or redevelopment of the property under consideration for rezoning.
- F. Additional Requirements. The following additional requirements and standards shall apply to conditional or contract zone applications:
 1. All property or development receiving a contract rezoning is not exempt from the otherwise applicable standards in Section 800 Site Plan Review or Section 900 Subdivision Review of this Ordinance.
 2. No proposal to amend the official zoning map shall be entertained within one (1) year from the date of denial of the same request, unless the Planning Board determines that the application is a substantial change from the previously denied rezoning application.

Section 100 Amendments

Order 14-223; Date 07-08-2014 Change in submission deadlines