

## SECTION 500 – PERFORMANCE STANDARDS

### Sections

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Performance Standards – The following standards are applicable in all zoning districts within the Ordinance. A performance standard shall not be applicable to uses that lawfully existed prior to enactment of the performance standard, except that they may be applied within the context of an application for a building permit or expansion or change of use.

### **501 Accessory Apartment**

The following standards shall apply to accessory apartments created after November 23, 2012:

- A. Shall be attached to a principal dwelling unit or contained within an accessory building to a single-family detached dwelling.
- B. The owner(s) of the principal dwelling must reside in the principal structure or the accessory apartment.
- C. The accessory apartment shall have a maximum cumulative floor area of six hundred (600) square feet.
- D. The accessory apartment shall have its own entrance.
- E. The maximum number of occupants of the accessory apartment is three (3).
- F. All necessary building or occupancy permits shall be obtained from the Code Enforcement Officer. Compliance with all building codes applicable to the construction of an accessory apartment is required.
  - 1) The permit shall be issued to the property owner and not run with the land. The transfer or sale of the property to a new owner shall require the issuance of a new permit for the current property owner. If the Accessory Apartment does not meet the performance standards of this ordinance at the time of transfer, the new owner shall have thirty (30) days to bring the Accessory Apartment into compliance. If the Accessory Apartment is not brought into compliance with the standards of this ordinance, the Code Enforcement Officer shall cause the use of the accessory apartment to be discontinued. The Accessory Apartment owner may at any time rectify the deficiencies identified by the Code Enforcement Office and re-apply for use of said apartment. All permits shall be recorded at the Cumberland County Registry of Deeds.
- G. Only one (1) accessory apartment shall be permitted per lot.
- H. Accessory apartments shall not count towards the zoning district's maximum residential density standard.
- I. A property on which an accessory apartment is located shall require the installation and use of a septic system that is approved to accommodate the waste water volume from two (2) dwelling units. All applications for an accessory apartment shall include an

HHE-200 form that documents the capacity of the existing or proposed system. Following review and approval by the Code Enforcement Officer, the HHE-200 form shall be recorded at the Cumberland County Registry of Deeds.

- J. The accessory apartment shall meet the parking requirements in Section 539 Parking and Loading and Section 812(C) Parking and Loading Requirements.

## 502 Agriculture

### A. Minimum Setbacks

1. Farm Buildings, other than Dwellings - Fifty (50) feet from the property line or one hundred (100) feet from an existing dwelling on neighboring land, whichever is farthest.
2. Feed lots, Fenced Runs, Pens and Similar Animal Raising and Care Facilities - one hundred (100) feet of a neighboring property line, excluding pastures.
3. Roadside Stands for the Sale of Agricultural Products. Twenty (20) feet from the nearest edge of roadway surfaces.

### B. Agriculture Sales - Sales of retail items customarily associated with the primary agricultural business on the property, but not grown, produced, assembled or manufactured on site, may be permitted provided that the lesser of the following two options is met:

1. No more than twenty (20) percent of the agricultural business' gross square footage shall be utilized for the sales and storage of said retail items.
2. No more than 2,000 square feet of the agricultural business' gross square footage may be used for the sales and storage of said retail items.
3. The gross square footage of the agricultural business shall be the calculated using the sum of both the interior and exterior areas used as part of the agricultural business, including any accessory uses to the agricultural business.

### C. Roadside Stands - Shall conform to the following standards:

1. Stands shall be allowed in all districts in which Agriculture is a permitted use or conditional use.
2. Stands shall be used exclusively for the sale of agricultural products.
2. Signs shall conform to provisions set forth in Section 700 Signs.
3. Stands shall be operated on land owned or leased by the person, company or partnership that cultivated and/or produced the agricultural products sold from the stand. The stand does not have to be on the same property on which the agricultural product was cultivated and/or produced.
4. The setback requirement of Subsection 502.A.3., above, shall apply.

### D. Keeping of Domesticated Pets.

1. Dogs and Cats – No limitations

2. Horses, Ponies and Other Large Pets - The raising of more than two (2) of each species of such animals six (6) months of age or older requires conformance with this Section 502 and the standards of the applicable land use district.
  3. Chickens. The keeping of chickens is governed by the standards of Section 504 Agriculture, Poultry Facility and Chapter 82 Domesticated Chickens.
- E. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

### **503 Agriculture, Piggery**

- A. Number of Animals. These standards apply to the keeping of two (2) or more pigs that are six (6) months old or older. These standards do not apply to the raising and selling of any number of pigs that are under six (6) months of age.
- B. Setbacks: The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:
1. Structures: 50 ft.
  2. Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

### **504 Agriculture, Poultry Facility**

- A. Number of Animals. These standards apply to the keeping of thirteen (13) or more poultry that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a permitted use or a conditional use. These standards do not apply to the raising and selling of any number of poultry that are under six (6) months of age. The keeping of twelve (12) or fewer chicken in the residential zoning districts (Farm, Farm Residential, Residential Light, and Residential Medium) is governed by the standards of Chapter 82 Domesticated Chickens.
- B. Setbacks: The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the poultry facility:
1. Structure, including Barns or Coops: 50 ft.
  2. Feed lots, pens and extensively used areas: 100 ft.

- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, “Manual of Best Management Practices for Maine Agriculture,” published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

**505 Adult Business Establishment**

- A. Such establishment shall be at least two thousand (2,000) feet from the nearest property line of any school, place of worship, library, playground, child care family home, child care facility or any residential zoning district. Said distance shall be measured in a straight line without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

**506 Automobile Auction Facility**

- A. Automobiles shall be kept on the lot for no more than 180 cumulative days.
  - 1. After 180 days, the operator must prove application to the State of Maine for an abandoned vehicle title or show a legal reason the automobile cannot be sold, such as active litigation.
- B. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than three hundred (300) feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Auction Facility.
- C. The designated parking area shall be screened from public ways and abutting properties. Such screening shall consist of opaque fencing which must be a minimum of six (6) feet in height.
- D. The Automobile Auction Facility shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
  - a. Burned vehicles shall be stored under cover to protect them from the elements.
  - b. No stacking of vehicles will be allowed.
- E. No dismantling of automobiles or storage of more than 50 gallons of fluid will be allowed on site.
- F. Automobile Auction Facilities shall require an annual inspection by the Code Enforcement Officer.
  - a. The following checklist will be used as a guide for annual inspections:

	Compliant	Not Compliant
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Proof of application to state for automobiles stored for more than 180 days?		
All stored vehicles stored in designated parking area?		
Fencing installed around the designated parking area?		
All burned vehicles stored under cover?		
No evidence of dismantling of automobiles or storage of more than 50 gallons fluids on site?		
Date of Inspection:		
Code Officer signature:		

### 507 Automobile Repair Services

- A. The following standards shall apply to all Auto Repair Services:
1. The sale of gasoline or other petroleum products shall not be allowed as an accessory use (*see standards for Automobile Gas Station*).
  2. Upon completion of all repair work, as requested by the customer, no more than two (2) registered automobiles shall be left on site in excess of forty-five (45) cumulative days each in a calendar year. (*See definition for "Automobile Graveyard" in Section 300.*) The storage of automobiles in excess of this standard shall not be allowed as an accessory use for Automobile Repair Services established after August 7, 2014 (*see standards for Automobile Storage Lot*).
  3. Automobiles may not be displayed for sale, or sold, on the premises, unless Automobile Sales, Outdoors is a permitted use or a conditional use in the applicable zoning district.

### 508 Automobile Storage Lot

- A. The following standards shall apply to Automobile Storage Lots created after August 7, 2014:
1. Automobiles shall be kept on the lot for no more than 45 cumulative days in a calendar year.
  2. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than 300 feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Storage Lot.
  3. The designated parking area shall be screened from public ways or structures on abutting properties. Such screening shall consist of opaque fencing, which must be a minimum of six (6) feet in height.

4. The Automobile Storage Lot shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
5. Automobile Storage Lots shall require an annual inspection by the Code Enforcement Officer.

### **509 Bed and Breakfast Inn**

- A. The following standards shall apply to all Bed and Breakfast Inns:
  1. A maximum of three (3) guest bedrooms shall be allowed in the inn.
  2. Total sleeping accommodations shall be for eight (8) or fewer guests.
  3. Breakfast shall be the only meal served and shall be limited to overnight guests.
  4. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.
  5. The Bed and Breakfast Inn must be the primary residence of the property's owner or operator.
  6. A structure shall not be used or occupied as a Bed and Breakfast Inn until:
    - (a) The State Fire Marshal certifies the structure to be in compliance with applicable sections of the NFPA 101 Life Safety Code,
    - (b) All necessary State approvals have been received, and
    - (c) A certificate of occupancy has been issued by the Code Enforcement Officer.

### **510 Boarding Home for Sheltered Care**

- A. The facility shall be licensed as a boarding care or congregate care facility according to regulations issued by the Maine Department of Health and Human Services.

### **511 Buffer Strip, Landscaped**

- A. The buffer strip shall be adjacent to, and parallel with, the front property line of a lot or parcel;
- B. The buffer strip shall run the entire length of the front property line.
- C. The buffer strip may be interrupted/crossed by driveways, access roads or pedestrian ways, but shall otherwise be maintained in a landscaped state.
  1. Driveways and access roads shall cross the buffer strip at an angle that is as close to perpendicular as possible.
  2. Public sidewalks may traverse the buffer strip parallel to the lots front lot line.
- D. The buffer strip shall not be used:
  1. For parking areas,
  2. Drive-through lanes for any use,
  3. The storage of material, equipment or waste, or



4. The display of any equipment, material or products.
- E. The buffer strip shall be:
1. Covered with trees or shrubs for at least ten (10) percent of its area
    - (a) The extent of the tree or shrub canopy at full maturity may be used in the calculation of the ten (10) percent coverage requirement.
  2. The remaining area shall be covered with any combination of bark mulch, grass or other natural green plant material.
  3. The following stormwater infrastructure shall be allowed within the landscaped buffer strip:
    - (a) Low Impact Development (LID) systems as identified in the September 21, 2007 report, "LID Guidance Manual for Maine Communities," as amended.
- F. Ground cover consisting of crushed rock, concrete, asphalt, green paint, or similar materials are not acceptable for the development of a landscaped buffer strip.
1. These materials shall be permitted if they are integral to the operation of a LID system, as described in Section 511.E.3.(a), as described above.

#### **512 Campground, Personal**

- A. Personal Campgrounds may be used for no more than one-hundred and twenty (120) days within a calendar year.

#### **513 Central Sewage System**

- A. The following standards, in addition to those required by the State of Maine, shall apply to centralized sewer systems:
1. A centralized system may include a private sewer collection system flowing into a larger septic tank, or it may include building drains flowing into individual smaller septic tanks.
  2. The wastewater, after receiving primary treatment in the septic tank or tanks, may be pumped or gravity fed to a single subsurface disposal field or several fields on a common land area.
  3. A maintenance agreement between the property owner's served by the central sewage system must be established and submitted to the Town of Windham prior to installation of the central sewage system.

#### **514 Child Care, Facility**

- A. Child care facilities must have a license from the Department of Health and Human Services to operate the facility.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.

*Note:* Child care applicants should refer to the State plumbing standards in 30-A M.R.S.A. § 4211.

### **515 Child Care, Family Home**

- A. Family Home Child Cares must have a certificate from the Department of Health and Human Services.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.
- C. The child care operation shall use a maximum of twenty percent (20%) of the total floor area of the dwelling unit in which it is located. The basement floor areas shall be excluded in the calculation of the twenty percent (20%).

*Note:* Child care applicants should refer to the State plumbing standards in 30-A M.R.S.A. § 4211.

### **516 Conditional Use**

- A. The Reviewing Authority shall permit as a conditional use any matter so referred to it by other provisions of this Ordinance, provided that the standards of this Section are met.
  - 1. Conditional use permits run with the land and thus pass from one owner of the property to the next unless the approval is limited to the petitioner by the Review Authority.
- B. Reviewing Authority
  - 1. Board of Appeals. The Board of Appeals shall serve as the Review Authority for all conditional use applications, except where the application is reviewed by the Planning Board.
  - 2. Planning Board. The Planning Board shall serve as the Review Authority for all conditional use applications that are submitted in combination with the following:
    - (a) A Minor Site Plan Review application under Section 800 Site Plan Review,
    - (b) A Major Site Plan Review application under Section 800 Site Plan Review, or
    - (c) A Minor or Major Subdivision Review application under Section 900 Subdivision Review.
- C. Submission Timelines
  - 1. Applications to the Board of Appeals shall be filed at least twenty-one (21) days prior to the meeting at which the applicant wishes to be heard.
  - 2. Submissions to the Planning Board shall meet the submission deadlines for subdivision or site plan review applications, as appropriate (*See Sec. 800 and 900*).
- D. Submission Requirements. The petitioner shall submit the following information to the proper Review Authority.

1. A cover letter describing the requested conditional use and location of the property.
2. Written statements describing how the conditional use will meet the review criteria of this Section.
3. Diagrams and/or photographs demonstrating that the conditional use will meet the review criteria of this Section. If the information is contained in either a Site Plan or Subdivision Application, it must be referenced in Subsection 516.D.1., above.
4. Proof of right, title or interest in the property on which the conditional use will be located.
5. An “Ability to Serve” letter from the Portland Water District if public water or sewer is to be supplied to the conditional use.
6. Documentation of the applicant’s technical capacity to implement the proposed use.

E. Application Fees

1. A non-refundable application fee as established by the Town Council.
2. A Peer review escrow deposit as established by the Town Council,
  - (a) Unexpended peer review escrow funds shall be returned to the applicant.

F. Consulting and Review Fees

1. The Review Authority may retain the services of an independent consulting firm for the review and/or post-approval inspection of any conditional use application.
2. The following procedures shall govern the use of an independent consulting firm
  - (a) Board of Appeals. The provisions of Section 1103.C. (*Board of Appeals Consulting and Review Fees*),
  - (b) Planning Board and Staff Review Committee: The provisions of Section 810.C. (*Site Plan Review Consulting and Review Fees*).

G. Public Hearing

1. The Review Authority shall hold a public hearing on any conditional use application.
2. Notification Requirements:
  - (a) The notice shall contain the time, date, and place of the hearing.
    - (1) Published in a newspaper of general circulation at least seven (7) days prior to the hearing.
    - (2) Mailed to abutting property owners at least seven (7) days prior to the hearing.
      - (i) Notices shall be deemed given when said notices are mailed. The failure of any petitioner or property owner to receive said notice shall not necessitate another hearing.

H. Review Criteria. The Reviewing Authority shall have the power and duty to approve, approve with conditions, or deny conditional use applications based on the following standards:











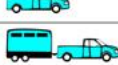



















1. Property Value. The proposed use will not depreciate the economic value of surrounding properties.
2. Wildlife Habitat. The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.
3. Botanical Species. The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.
4. Potable Water
  - (a) The proposed use has access to potable water,
  - (b) The proposed use will not burden either a groundwater aquifer or public water system.
5. Sewage Disposal. The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either:
  - (a) The existing sewage system has adequate capacity for the proposed use, or
  - (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.
6. Traffic. The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.
7. Public Safety. The proposed use will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
8. Vibration. The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest "protected structure," as defined by the Maine Department of Environmental Protection.
9. Noise. The proposed use shall meet the noise standards in Section 812.S. of the Site Plan Review Ordinance.
10. Off-Street Parking and Loading. The proposed use meets the parking and loading standards of Section 812.C. Site Plan Review.
11. Odors. The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries.

12. **Air Pollution.** No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property, or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted composed of any solid or liquid particles in concentration exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at any point.
  13. **Water Pollution.** No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.
  14. **Erosion and Sediment Control.** The proposed use will not cause water pollution, sedimentation, erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.
  15. **Hazardous Material.** No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.
  16. **Zoning District and Performance Standards.** The proposed use meets the applicable zoning district standards in Section 400 and the applicable performance standards of Section 500.
  17. **Solid Waste Management.** The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
- I. **Conditions of Approval.** In granting a conditional use, the Reviewing Authority shall have the authority to impose such conditions as it deems necessary in furtherance of the intent and purpose of this Ordinance, to assure that there will be no adverse effects on adjacent properties, and to assure that the proposed use or modification will be compatible with other uses in the neighborhood or district. Such conditions of approval may be imposed based upon, but shall not be limited to, the following factors:
1. The location of drives, parking areas, lighting, signs, dumpsters, snow storage areas and outdoor storage areas,
  2. Access to the site for vehicular and pedestrian traffic, and emergency access,
  3. Sight distance at access points,
  4. Fences, screening and buffering,
  5. Landscaping and stormwater drainage,
  6. Hours of Operation
  7. Any other factors relating to the impact of the proposed use on neighboring properties.

- J. Inspections. The Reviewing Authority may require the provision of third party inspections during installation of the proposed use.
  - 1. The applicant shall be responsible for all third party inspections,
  - 2. An escrow account for the provision of third party inspections shall be established prior to the issuance of a building permit, or installation of the proposed use.
    - (a) All unexpended funds from the escrow account shall be returned to the applicant.

**517 Contractor Services**

- A. Type of Contractor Vehicles. Contractor Services uses are limited to single unit, dual axle vehicles only. These vehicles types are classified by the Federal Highway Administration as Class 1-5 vehicles. See table below.

<b>Class 1</b> Motorcycles		<b>Class 7</b> Four or more axle, single unit	
<b>Class 2</b> Passenger cars		<b>Class 8</b> Four or less axle, single trailer	
			
			
<b>Class 3</b> Four tire, single unit		<b>Class 9</b> 5-Axle tractor semitrailer	
			
<b>Class 4</b> Buses		<b>Class 10</b> Six or more axle, single trailer	
			
			
<b>Class 5</b> Two axle, six tire, single unit		<b>Class 11</b> Five or less axle, multi trailer	
			
<b>Class 6</b> Three axle, single unit		<b>Class 12</b> Six axle, multi-trailer	
			
			
		<b>Class 13</b> Seven or more axle, multi-trailer	
			





























Federal Highway Administration Vehicle Classification Table

- B. Storage of Materials. Machinery, trailers, equipment and materials must be stored indoors (see Section 519 Contractor Storage Yard for standards related to outdoor storage).
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
  - 1. All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings.

2. All lighting shall be designed and directed to minimize light levels at the property line.
3. The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.

**518 Contractor Services, Landscaping**

A. Type of Contractor Vehicles. Contractor Services uses are limited to single unit, dual axle vehicles only. These vehicles types are classified by the Federal Highway Administration as Class 1-5 vehicles. See table below.

<b>Class 1</b> Motorcycles		<b>Class 7</b> Four or more axle, single unit	
<b>Class 2</b> Passenger cars		<b>Class 8</b> Four or less axle, single trailer	
			
			
<b>Class 3</b> Four tire, single unit		<b>Class 9</b> 5-Axle tractor semitrailer	
			
<b>Class 4</b> Buses		<b>Class 10</b> Six or more axle, single trailer	
			
		<b>Class 11</b> Five or less axle, multi trailer	
<b>Class 5</b> Two axle, six tire, single unit		<b>Class 12</b> Six axle, multi-trailer	
			
<b>Class 6</b> Three axle, single unit		<b>Class 13</b> Seven or more axle, multi-trailer	
			
			

Federal Highway Administration Vehicle Classification Table

B. Storage of Materials. Machinery, trailers, equipment and materials must be stored indoors (see Section 519 Contractor Storage Yard for standards related to outdoor storage).

- C. Lighting. Lighting may be used which serves security, safety and operational needs.
1. All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings.
  2. All lighting shall be designed and directed to minimize light levels at the property line.

3. The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.



































### **519 Contractor Storage Yard**

- A. Visual Screening. All stockpiled materials, including sand, gravel, crushed rock, topsoil, mulch and other similar materials, as well as outdoor storage areas for equipment and Heavy Construction Service vehicles must be screened from abutting properties and public rights-of-way with 6-foot opaque fencing or screened with well-maintained evergreen vegetation a minimum of 6-feet high at the time of planting.
  1. Fencing or landscaping requirements may be reduced by the review authority where the Contractor Storage Yard is adequately screened through existing vegetated areas, the position of buildings on-site, or by using a site's topography to minimize view of the Contractor Storage Yard from abutting properties and public rights-of-way.
- B. Solid Waste and Recycling. All dumpsters or similar large collection receptacles for waste materials and recyclables must be located on level compacted gravel or pavement. These receptacles shall be screened from view with opaque fencing or landscaping.
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
  1. All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings.

### **520 Constructions Services, Heavy (Major and Minor)**

- A. Type of Vehicles. Heavy Construction Services uses may include multi-axle vehicles, such as three and four axle dump trucks, cement mixers, multi-unit vehicles and other heavy vehicles. These vehicles types are classified by the Federal Highway Administration as Class 6-13 vehicles. See table below.



<b>Class 1</b> Motorcycles		<b>Class 7</b> Four or more axle, single unit	
<b>Class 2</b> Passenger cars		<b>Class 8</b> Four or less axle, single trailer	
			
			
			
<b>Class 3</b> Four tire, single unit		<b>Class 9</b> 5-Axle tractor semitrailer	
			
			
<b>Class 4</b> Buses		<b>Class 10</b> Six or more axle, single trailer	
			
		<b>Class 11</b> Five or less axle, multi trailer	
<b>Class 5</b> Two axle, six tire, single unit		<b>Class 12</b> Six axle, multi-trailer	
			
		<b>Class 13</b> Seven or more axle, multi-trailer	
<b>Class 6</b> Three axle, single unit			
			
			

Federal Highway Administration Vehicle Classification Table

- B. Storage of materials and vehicles. All Heavy Construction Services vehicles, trailers, machinery, equipment and materials must be stored indoors (see Section 519 Contractor Storage Yard for standards related to outdoor storage).
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
  1. All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings.
  2. All lighting shall be designed and directed to minimize light levels at the property line.
  3. The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.

**521 Controlled Access Street**

- A. For the purposes of this Ordinance, only the following streets shall be classified as controlled access streets: Manchester Drive.

- B. All curb cuts on a controlled access street must be spaced at least three-hundred (300) linear feet from the nearest curb cut on said controlled access street.

*(See Sec. 300 Definition of "Street Classification")*

## **522 Curb Cuts and Driveway Openings**

- A. These standards provide for the review of any entrance onto a public way for compliance with sound construction and design practices to ensure that traffic safety, drainage and public improvements are not adversely affected. In many cases, this section works in conjunction with the street design standards in Section 900 Subdivision Review.
- B. Zoning District Standards
1. F, FR, RL, RM Districts
    - (a) A parcel shall be limited to two (2) curb cuts on the same street.
      - (1) The Planning Board may waive this standard in the C1 District to allow a maximum of two (2) curb cuts on a non-Arterial street if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.
    - (b) Each curb cut shall be limited to thirty (30) feet in width.
      - (1) The Planning Board may waive this standard if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.
  2. C1, C2, C3, I Districts
    - (a) A parcel shall be limited to one (1) curb cut on the same street.
      - (1) The Planning Board may waive this standard in the C-1 District to allow a maximum of two (2) curb cuts on a non-Arterial street if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.
    - (b) Each curb cut shall be limited to forty (40) feet in width.
      - (1) The Planning Board may waive this standard if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.

- (c) Parking areas with more than two (2) parking spaces shall be so arranged that vehicles can maneuver within such areas and exit onto the street in a forward motion.

#### C. Permit Required

1. No driveway, entrance or approach or other improvement within the limits of a public right-of-way may be constructed, altered or relocated except in accordance with an Entrance Permit issued by the Town upon application.
2. The Town Council may establish the fee for an Entrance Permit.
3. Entrance Permits shall be reviewed and approved by the Director of Public Works, or his designee.
4. The Entrance Permit shall be valid for a period of twelve (12) months from the date of original issue.
5. No entrance, approach or other improvement constructed on a public right-of-way shall be relocated or its dimensions altered without an Entrance Permit from the Town.
6. The property owner is responsible for future maintenance of the entrance within the limits of the public right of way and shall maintain the entrance in accordance with the approved permit.
7. All work to a curb cut in accordance with the approved permit must be completed prior to the issuance of an occupancy permit for any structure accessed by said curb cut, except for the following:
  - (a) During periods of the year in which asphalt may not be obtained from a manufacturer, the Director of Public Works or Code Enforcement Officer may grant a conditional certificate of occupancy with a condition that all required work on the curb cut must be completed within two (2) months of the opening of the local asphalt plants.
    - (1) Failure to complete all work to a curb cut in accordance with the approved permit shall constitute a violation of this Ordinance. (*See Sec. 1000 Administration*)

#### D. Approval Criteria

1. General. Entrances shall be designed and constructed to provide safe access to the public right-of-way. Applicants are encouraged to comply with the "Access Management Handbook for Local Officials" as developed by the Maine Department of Transportation, 1994, as amended.

2. Applicant. The applicant for a permit shall be the owner of the property being served, or his designee. Any driveway or approach constructed by the owner shall be for the bonafide purpose of securing access to the owner's property and not for the purpose of parking or servicing vehicles in, or on, the public right-of-way.
3. Sight Distance Criteria. All entrances shall be so located such that vehicles approaching or using the entrance will be able to obtain adequate sight distance in both directions along the public way or to maneuver safely and without interference with traffic.
  - (a) Measurements to determine sight distance shall be made in the proposed entrance at a point ten feet (10') from the edge of the traveled way with the height of eye three and one-half feet (3.5') above the pavement. The sight distance shall be computed from this point measuring along the roadway to a point where an approaching height of object four and one-quarter feet (4.25') is first seen.
  - (b) Driveway placement shall be such that an exiting vehicle has an unobstructed sight distance according to the minimum sight distance standards in Sec. 911.M.4. and Table 1 of Sec. 900 Subdivision Review. (*See Sec. 900 Subdivision Review*)

#### E. Geometry

1. The entrance shall have a maximum slope of 3% for a minimum of one car length from the edge of pavement of the public street.
2. For uncurbed public rights-of-way, the entrance shall in general slope away from the public street surface at a rate of not less than one-quarter inch per foot, nor more than one-inch per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four feet (4') from the edge of pavement.
3. The entrance should intersect the traveled public street in accordance with the applicable standards in Table 3 of Section 900 Subdivision Review. For driveways, the minimum angle of street intersection standards for a "Local Street" shall apply. (*See Table 3 in Appendix B Street Standards*)
4. No part of the entrance shall extend beyond the property lot frontage for the lot being served.
5. The entrance shall be set back at least 50 feet from a public intersection.

#### F. Drainage

1. Existing roadside drainage in gutter or ditch lines shall not be altered or impeded by the applicant. The applicant must provide at his/her expense suitable and approved drainage structures at all entrances.

2. The applicant, at his/her expense, may be required to make improvements to existing drainage structures to mitigate any impacts of the proposed curb cut.
3. Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.
4. Where a drainage culvert is required to maintain roadside drainage the Town must approve the pipe diameter/length and type of pipe material prior to installation. In any case, the pipe size shall be at least 12 inches in diameter.

#### G. Construction

1. The owner shall be responsible for all construction and restoration of disturbed areas for the entrance within the limits of the public right-of-way.
2. The entire portion of any entrance within the limits of the public right-of-way shall be constructed with a well-graded gravel base course that meets the aggregate sub-base standards for the street on which the entrance is located. (*See Table 4 in Appendix B Street Standards*)
3. The entrance shall have a paved apron that extends at least four feet (4') back from the edge of pavement of the public street. At a minimum, the paved apron shall consist of a one-and-a-half inch (1.5") base course that complies with the HMA 19.0 mm standard.

#### H. Curb and Sidewalk

1. When sidewalk or curb exists at the proposed entrance the applicant shall remove and replace such materials at the applicant's expense. Any granite curb to be removed by the applicant will remain the property of the Town.
2. Where curb exists, curb tip-downs shall be provided at each side of the new entrance.
3. Where sidewalk is removed to accommodate a new entrance a new walk surface of equal type construction is to be provided. In general Sidewalks shall meet the following standards:
  - (a) The maximum sidewalk longitudinal transition slope is not to exceed 1 vertical to 12 horizontal.
  - (b) The maximum sidewalk cross-slope is not to exceed 2%.
  - (c) No abrupt changes in grade are permitted and the maximum curb reveal crossing a walkway is 0.5 inch or less.
4. The sidewalk area at all entrances shall meet the standards of the Americans with Disabilities Act.

**523 Developable Land**

- A. Land proposed for development shall meet the following standards:
1. A parcel of land that meets the standards of the zoning district in which it is located, or
  2. If located in an approved subdivision, a parcel of land that meets the standards for “Net Residential Area or Acreage” in section 500 Performance Standards.

**524 Drive-through Facility**

- A. A drive-through facility shall only be allowed as part of a principle use that is allowed as either a permitted use or conditional use in the applicable zoning district. (*See Sec. 400 Zoning Districts*)

**525 Dwelling, Mixed Use**

- A. The following standards shall apply to mixed use dwellings:
1. These uses shall not be permitted in the basement or first story of a building.
  2. The entire building in which the uses are located shall be equipped with a sprinkler system approved by the Windham Fire Department or State Fire Marshall’s Office.

**526 Farm Enterprise**

- A. Approval Required. The Board of Appeals must approve all applications for a Farm Enterprise.
1. The granting of a Farm Enterprise shall apply to the applicant and shall not be transferable to a subsequent owner of the property.
- B. Public Notification. Notice shall be sent to all owners of abutting property at least seven (7) days prior to the Board’s initial consideration of an application.
- C. Public Hearing. The Board of Appeals shall hold a public hearing on any application. Notice of the public hearing shall be:
1. Mailed to the owners of all abutting property at least seven (7) days prior to the hearing,
  2. Advertised in a newspaper of general circulation at least seven (7) days prior to the hearing.
- D. Permitted Uses. Farm Enterprise uses shall be as follows:
1. Uses that meet the standards of Subsection 526.E,

- a. Uses may include public or private events such as meetings, parties, weddings, receptions, dances, sporting events and on-site lodging for the special event.
- E. Standards
1. The property serving as the site for a farm enterprise shall be at least five (5) contiguous acres and principal agriculture use. The property may or may not have a residential use.
  2. The farm enterprise shall be owned by the owner of the agriculture use.
  2. The farm enterprise is located on property owned by the owner of the agriculture use.
  3. Should the farm enterprise not be conducted in an existing structure, new structure(s) constructed, or temporary structures, such as tents, erected for the sole purpose of conducting a farm enterprise shall not exceed a total of 10,000 square feet of ground area.
  4. Noise. The standards in Section 812.S shall apply.
  5. Hours. Hours of operation shall be limited to the hours of 8:00 am to 10:00 pm.
  6. Lighting. All lighting associated with the farm enterprise shall be turned off by 11:00 pm. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky.
  7. Parking. In addition to the off-street parking provided to meet the normal requirements of the farm, adequate off-street parking shall be provided for the following:
    - a. Vehicles of each employee, and
    - b. Vehicles of the maximum number of users which the farm enterprise may attract during peak operating hours.
  8. Sewage. Evidence shall be provided that the property's subsurface disposal system can accommodate the wastewater generated by the farm enterprise. Temporary use of portable toilet units is allowed for special events. Prior to each event, the location and number of portable toilet units shall be approved by the Code Enforcement Officer.
  9. Traffic
    - a. The Board of Appeals may require parking attendant(s) to direct traffic into the facility and towards available parking at the start of the event.
    - b. Temporary directional signage shall be located on any entrance and within the parking area to ensure orderly flow of traffic. Temporary signs shall be placed prior to all events and removed at the conclusion of the event.
  10. Operation Limits for public or private events, and other types of periodic uses.
    - a. No more than twenty-four (24) individual events may be held in a calendar year.

- F. Conditions. The Board of Appeals may place conditions on the farm enterprise to minimize impacts on area properties. The conditions must be related to the Board of Appeal's findings on the standards listed in Subsection 526.E.

### **527 Home Occupation 1**

- A. Permit Required. A permit must be obtained from the Department of Code Enforcement prior to the installation of a Home Occupation 1.
1. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property.
- B. Permitted Uses. The following uses, as defined in Section 300, shall be allowed as a Home Occupation 1:
1. Artist Studio
  2. Small Engine Repair
  3. Business and Professional Office
  4. Service Business, Personal (*See Subsec. 527.C.1. below*)
  5. Medical Marijuana Registered Caregiver (Home Occupation) (*See Sec. 537 Marijuana Businesses*)
- C. Standards. In making its findings, the Department of Code Enforcement shall use the standards for a Home Occupation 2 in Section 527.F. and the following:
1. Service Business Personal. When authorized as a Home Occupation 1, this use shall not include laundry or dry cleaning services. (*Laundry and dry cleaning services may apply under Sec. 528 Home Occupation 2*)
- D. Conditions. The Department of Code Enforcement may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Code Enforcement Officer's findings on the standards listed in Subsection 527.F.

### **528 Home Occupation 2**

- A. Approval Required. The Board of Appeals must approve all applications for a Home Occupation 2.
1. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property and shall not be transferable to a subsequent resident of the property.
- B. Public Notification. Notice shall be sent to all owners of abutting property at least seven (7) days prior to the Board's initial consideration of an application.
- C. Public Hearing. The Board of Appeals shall hold a public hearing on any application. Notice of the public hearing shall be:
1. Mailed to the owners of all abutting property at least seven (7) days prior to the hearing,



2. Advertised in a newspaper of general circulation at least seven (7) days prior to the hearing.
- D. Permitted Uses. Home Occupation 2 uses shall be as follows:
1. Uses that meet the standards of Subsection 528.F,
  2. Uses that are not prohibited by Subsection 528.E.
- E. Prohibited Uses. The following uses are specifically prohibited as a Home Occupation 2:
1. Auto Repair Services
  2. Welding
  3. Slaughterhouse
  4. Smoke House.
- F. Standards
1. The home occupation shall be carried on wholly within the dwelling or accessory structure.
  2. The home occupation shall be carried on primarily by a member or members of the family residing in the dwelling unit.
    - (a) Not more than two (2) persons who are not family members residing in the dwelling unit shall be employed.
  3. There shall be no exterior display, no exterior sign, other than those permitted in Section 705.D Signs, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
  4. Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare or activity at unreasonable hours, shall not be permitted.
  5. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the following:
    - (a) Vehicles of each employee, and
    - (b) Vehicles of the maximum number of users which the home occupation may attract during peak operating hours.
  6. The home occupation shall not utilize more than twenty percent (20%) of the total floor area of the dwelling unit. The basement floor area and accessory structure floor area shall be excluded in the calculation of the twenty percent (20%).
  7. Evidence shall be provided that the property's subsurface disposal system can accommodate the wastewater generated by the home occupation.
  8. The home occupation shall not generate traffic of a substantially greater volume than would normally be expected in the neighborhood.

9. If renting or leasing, the tenant must demonstrate the property owner's approval.
- G. Conditions. The Board of Appeals may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Board of Appeal's findings on the standards listed in Subsection 527.F.

**529 Hotel**

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

**530 Industry, Light**

- A. All manufacturing processes must be wholly contained within a building,
- B. The manufacturing, stockpiling or distribution of hazardous materials shall not be permitted; however
  1. The storage and use of hazardous materials as part of a production process shall be permitted.

**531 Kennel, Major**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

**532 Kennel, Minor**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

**533 Lot, Backlot**

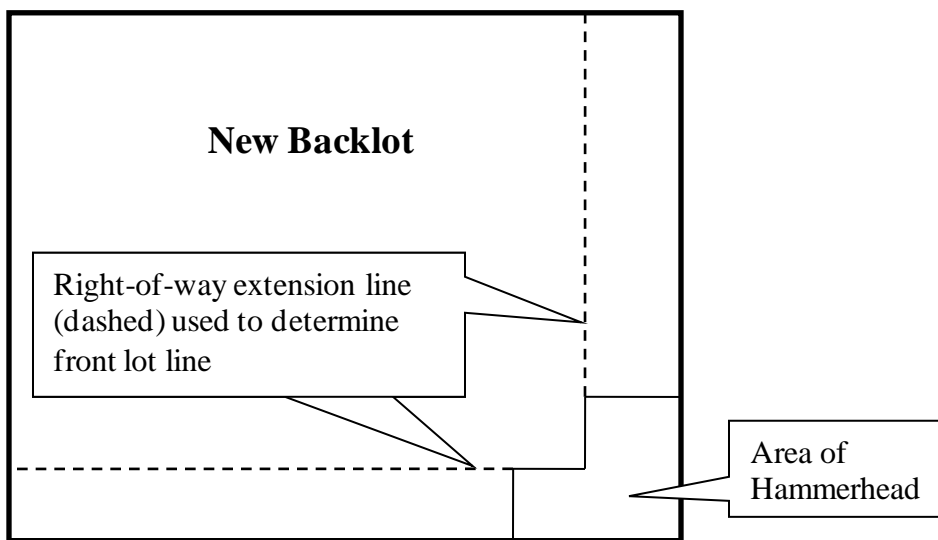
- A. Zoning Districts. Backlots shall be permitted in the following zoning districts:
  - Farm
  - Farm-Residential
  - Light-Density Residential

- Medium-Density Residential
- B. Standards. The following standards shall apply to the creation of backlots, or the extension of existing backlot rights-of-way:
1. General Standards. The following general standards apply to backlots:
    - (a) Rights-of-Way.
      - (1) Backlots must be accessed by a right-of-way having a minimum width of fifty (50) feet. The required minimum width must be continued for the entire length of the right-of-way.
      - (2) A right-of-way shall serve no more than one (1) backlot.
      - (3) A right of way serving more than one (1) backlot shall meet the applicable street construction standards of Section 555.
      - (4) A hammerhead turnaround shall be provided in accordance with Section 555(B)(8)(f)(2).
    - (5) Right-of-Way Extensions:
      - (i) The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.
      - (ii) All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.
  - (b) Frontage. The backlot shall meet the minimum frontage requirement of the applicable zoning district along the right-of-way.
    - (1) All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage. If the hammerhead turnaround is removed to accommodate future right-of-way extensions, the original lot must still meet the minimum lot frontage requirement.
  - (c) Minimum Setback Requirements
    - (1) The required minimum front setback standard for structures constructed on a backlot shall be measured from the closest edge of the right-of-way.
    - (2) Minimum setbacks from a new right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.
    - (3) Front Lot Line. For purposes of determining the front lot line, and the front setback, the right-of-way shall be deemed to run from one side of the lot to the other side of the lot if it ends prior to that point. (*See Diagram A*)
    - (4) Corner Lots. If a corner lot is created by the installation of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in

Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. *(Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.)* If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.

- (5) No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street, private road or private way.

**Diagram A**  
**Front Lot Line**



#### **534 Lot, Corner**

- A. Front Setbacks. The required front setback shall be required on both sides of the lot that front on a public or private right-of-way.
- B. The remaining two sides of the lot shall meet the side yard requirements of the applicable zoning district.
- C. Rear Setbacks. A rear setback is not required for corner lots.

#### **535 Manufactured Housing**

- A. Manufactured housing, as defined, shall be allowed in any district in which single-family detached dwellings are permitted.

- B. Manufactured housing shall meet all applicable standards of 30-A, M.R.S.A. § 4358.

### **536 Marijuana for Personal Use**

- A. All marijuana cultivated for personal use under Title 28-B of the Maine Revised Statutes shall be grown indoors only on a property with an occupied Dwelling.

### **537 Marijuana Businesses**

This section regulates Marijuana Businesses, as defined, uses within the Town of Windham. The permitting standards outlined here shall be adhered to for all Marijuana Businesses, in addition to other applicable standards in this and other ordinances or state law.

- A. Marijuana Businesses shall not locate within 1,000 feet of a public or private school, measured from the exterior wall of the Marijuana Business to the property line of the protected use. Marijuana Businesses other than Caregiver (home occupation) shall not locate within 250 feet of a state licensed daycare of any size, measured from the main entrance door of the daycare facility to the main entrance door of the Marijuana Business. This section shall not prohibit the activity of a caregiver or other authorized individual from administering medical marijuana to a qualified patient who is located within one of these protected areas.
- B. Marijuana Businesses shall not have any odor of marijuana detectible beyond the area controlled by the business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land. Odors shall be controlled by whatever best-practices exist.
- C. Marijuana grown by any Marijuana Business shall be grown indoors only. A Medical Marijuana Caregiver shall not conduct any sale of the product on premises unless the business is also permitted as a Medical Marijuana Caregiver Retail Store.
1. Medical Marijuana grown by Medical Marijuana Caregivers shall be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot unless the business is also permitted as a Marijuana Cultivation Facility. A Medical Marijuana Caregiver or Medical Marijuana Caregiver (Home Occupation) in operation as of the effective date of this section shall be permitted to maintain the grow area in existence as of the effective date of this section.
- D. Medical Marijuana Registered Caregiver and Medical Marijuana Registered Caregiver (Home Occupation), when required by state law to be licensed to manufacture, may only manufacture medical marijuana products in zoning districts where Marijuana Manufacturing Facilities are permitted.

- E. Medical Marijuana Registered Caregiver (Home Occupation) shall at all times meet all permit and operational requirements for a home occupation and the additional license requirements for a Medical Marijuana Registered Caregiver (Home Occupation). See Section 527 Home Occupation 1 for limitations of Medical Marijuana Caregiver (Home Occupation). Medical Marijuana grown by Medical Marijuana Caregiver (Home Occupation) in basements and accessory structures shall be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot for all caregivers cultivating on the lot.

### **538 Medical Office**

- A. Residential Districts – F, FR, RL, RM.
1. A medical office located on a lot in a residential district shall have a combined footprint of 2,000 gross square feet or less. (*See definition of “Building Footprint”*)
  2. A medical office located in a residential district shall be limited to the first story of the building. The additional height of the building’s roof shall meet the height standard of the applicable zoning district.

### **539 Mobile Home Park**

- A. Mobile home parks shall be located according to the Mobile Home Park Overlay District.

### **540 Motel**

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

### **541 Net Residential Area or Acreage**

- A. Non Subdivision. The net residential area or acreage of a lot shall be calculated by dividing the area of the parcel by the net residential density standard of the appropriate zoning district.
- B. Subdivisions. The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by, 1) subtracting the items listed below from the gross acreage of a lot, and 2) dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (*see Sec. 400 Zoning Districts*). The following shall be subtracted from the gross acreage of the lot:
1. Acreage which is used for public or private rights-of-way.

2. Portions of the parcel containing slopes over twenty-five percent (25%).
3. Portions of the parcel shown to be within the one-hundred (100) year flood plain and floodway as designated by the Federal Emergency Management Agency (FEMA) on the Flood Insurance Rate Maps for the Town of Windham, Maine.
4. Portions of the parcel located in the Resource Protection District.
5. Portions of the parcel which are unsuitable for development in their natural state due to drainage or subsoil conditions, including but not limited to:
  - (a) A water table at or near the surface for all or part of the year.
  - (b) Soils identified as, "Very Poorly Drained," by the U.S. Department of Agriculture's (USDA), "Soil Survey for Cumberland County, Maine," however,
    - (1) A property owner may conduct a soil survey of appropriate class for the development to refute the classification of the, "Soil Survey for Cumberland County, Maine,"
      - (i) The Code Enforcement Officer shall make a final determination based upon the results of the soil survey, and any other applicable information supplied by the property owner.
6. Portions of the parcel covered by surface waterbodies.
7. Boundaries of areas on the parcel containing significant wildlife habitat, as determined by the applicant in consultation with the Maine Department of Inland Fisheries and Wildlife.
8. Boundaries of areas on the parcel containing endangered botanical resources, as determined by the applicant in consultation with the Maine Department of Conservation.

#### **542 Parking and Loading**

- A. The standards for parking and loading in Section 800 Site Plan Review shall apply to the uses in all zoning districts.
  1. Waivers of the off-street parking and loading standards may only be granted by the Planning Board as part of a site plan or subdivision application. (*See Sec. 800 Site Plan Review or Sec. 900 Subdivision Review*)

#### **543 Public Utility Facility**

- A. Height limitations in the applicable zoning districts shall not apply to public water storage and distribution facilities.

**544 Pump Station**

- A. Pump stations shall be allowed in all zoning districts.
- B. Pump stations shall not require a building permit.
- C. Pump stations shall not be required to meet the dimensional standards in the applicable zoning district.

**545 Restaurants**

- A. Restaurants. Restaurants established after [effective date] shall meet the following standards:
  - (1) Trash/Dumpster. All trash containers or dumpsters located outside of a building shall be stored so as to be screened from view.
  - (2) Grease Removal. All new or expanded restaurants shall install a grease trap as required by the Maine State Plumbing Code.
  - (3) Buffer. A buffer strip, as defined, shall be provided between the restaurant and any abutting Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons, or any residential zoning district.
  - (4) Noise. The restaurant shall comply with the noise standards contained in Section 812(S) of this Ordinance.
  - (5) Smoke. Indoor or outdoor cooking that produces smoke from grills, smokers or open fires shall be located at least 100 feet from any abutting Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons or any residential zoning district.
  - (6) Outside Seating. Outdoor seating located within 100 feet of any Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons, or any residential zoning district shall be limited to the following hours:
    - Sunday to Thursday – Daytime hours, as defined.
    - Friday and Saturday – 7:00 a.m. to 9:00 p.m.
  - (7) Septic. All new or enlarged restaurants shall provide evidence that the septic system is in compliance with the Maine State Plumbing Code.

**546 Retail Sales, Automobile Sales**

- A. Parking Area Layout and Minimum Space Requirements. See Section 812.C. for parking requirements applicable to the storage of vehicles for display, repair or sale.

**547 Retail Sales, Convenience**



- A. Gross square footage for retail and storage purposes may not exceed one thousand five hundred (1,500) square feet.
- B. Outdoor storage shall not be permitted.
- C. The sale of gasoline shall not be permitted.

#### **548 Retail Sales, Outdoor**

- A. Outdoor sales may be approved by the Code Enforcement Officer in accordance with the following standards:
  - 1. Outdoor sales shall be allowed as an accessory use to the principle retail use on the property,
  - 2. If outdoor sales are conducted in a parking lot, the minimum off-street parking space requirements of the Land Use Ordinance shall be maintained,
  - 3. A permit shall be obtained from the Code Enforcement Officer,
  - 4. The outdoor sales permit shall be limited to the petitioner and shall therefore not run with the land.
  - 5. An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer at the time of application.
  - 6. A plan shall be submitted to the Code Enforcement Officer delineating the area on which the outdoor sales will be conducted (at a minimum the plan shall also show the tax map boundaries of the property, the approximate location of all buildings, and the location of parking areas).
  - 7. Outdoor sales shall not be conducted in a vehicular travel way.
  - 8. Outdoor sales conducted on any public or private walkways or sidewalks shall meet the standards the Americans with Disabilities Act (ADA).
  - 9. Outdoor sales shall not be located in any side setback or Landscaped Buffer Strip required by the Land Use Ordinance or as a condition of a property's site plan approval.
  - 10. These standards shall not apply to roadside standards governed by the standards for Agriculture in Section 502.
  - 11. These standards shall not apply to a temporary outside sales events. Temporary outside sales events shall meet the following standards:
    - (1) The outside sales event shall not last for more than three (3) consecutive days.
    - (2) A permit shall be obtained from the Code Enforcement Officer for each outdoor sales event.
    - (3) An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer at the time of application.
    - (4) The Code Enforcement Officer must find that the following conditions have been met:
      - (i) Safe vehicular access and onsite circulation is provided to reduce vehicular cueing on public ways.

- (ii) The applicant demonstrates that adequate parking is provided to accommodate all vehicles either on-site, or in an off-site location that meets the requirements of Section 812(C)(2)(b).

#### **549 Retirement Community**

- A. The retirement community shall meet the standards established in 42 U.S.C.A. § 4607 for housing for older persons:
  - 1. The property owner shall notify the Department of Code Enforcement when compliance reports have been submitted to the U.S. Department of Housing and Urban Development (HUD),
    - (a) The Department of Code Enforcement may request that copies of any report be sent to the Town of Windham.
- B. Retirement Community projects shall conform with the Street and Road Design Standards in Section 900 Subdivision Review.

#### **550 Rooming House**

- A. General Standards
  - 1. Creation of Use. A Rooming House shall only be allowed through the conversion of an existing Dwelling, Nursing Home or Boarding Home for Sheltered Care facility.
  - 2. Number of Dwelling Units. A Rooming House shall contain between ten (10) to fifteen (15) rooms.
- B. Common Area/Facility Requirements
  - 1. Kitchen. A full kitchen shall be provided for use by all tenants.
  - 2. Toilets. At least one (1) property working toilet shall be supplied for each six (6) persons or fraction thereof, residing within the Rooming House.
  - 3. Bathing. At least one (1) properly working bathtub or shower, shall be supplied for each eight (8) persons or fraction thereof, residing within the Rooming House.
  - 4. All common facilities shall be located within the Rooming House so as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every kitchen, lavatory basin, bathtub, or shower shall be supplied with hot water at all times.
- C. Driveway Requirements
  - 1. Minimum width of pavement or gravel: 22 ft
  - 2. Maximum grade: 3% within 50 ft. of private way or street.
  - 3. Minimum angle of intersection: 60°
  - 4. Sight Distance: Maine Dept. of Transportation Standard.
- D. Fire/Emergency Safety and Protection
  - 1. The Rooming House shall be sprinkled throughout.
  - 2. Smoke detectors shall be required in all bedrooms and common areas.

3. All fire safety and protection systems shall meet or exceed local and state fire safety regulations.
  4. All sleeping rooms shall provide adequate ventilation and means of egress.
  5. The parking lot shall be arranged so as not to restrict fire and/or emergency vehicles access.
- E. Landlord Tenant Legal Requirements
1. Rooms shall be for hire by the week.
  2. Lease/Rental agreements and rental policy rules and regulations shall be required.
- F. Maintenance Requirements
1. The facility shall provide on premise management.
  2. The operator shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for maintenance of a sanitary condition in every other part of the rooming house and the premises on which it is located.
- G. Plan Requirements
1. The operator or applicant shall submit a set of detailed plans drawn to scale by a professional Engineer or Architect, of the interior of the building showing how they meet the requirements for the Rooming House.
- H. Sleeping Unit Requirements
1. Minimum Floor Area
    - (a) Single Occupancy Unit: 90 s.f.
    - (b) Double Occupancy Unit: 160 s.f.

### **551 Sawmill, Permanent**

- A. Permit Required. The sawmill shall require a use permit from the Department of Code Enforcement.
- B. Hours of Operation. The sawmill shall only operate during daytime hours, as defined in Section 300.
- C. Setback. The sawmill shall be setback at least 100 feet from the following uses:
1. Dwelling, not owned or occupied by the sawmill operator,
  2. School,
  3. Place of Worship.
- D. Buffers. The sawmill shall establish and maintain a buffer strip, as defined, along all property lines that abut a use listed in subsection 548.C above.
1. Mature trees in the buffer strip shall be preserved to the maximum extent practical.
- E. Stacking of Wood. Wood shall not be stacked to a height that is greater than the buffer provided along abutting property lines.

- F. Maximum Noise Limit at all property lines
- |                            |          |
|----------------------------|----------|
| 1. Daytime Hours:          | 60 dBA   |
| 2. Nighttime Hours:        | 50 dBA   |
| 3. Temporary Chainsaw Use: | No Limit |
- G. Erosion Control. The sawmill shall provide an erosion control plan to the Department of Code Enforcement prior to receiving a use permit.
1. The erosion control plan shall include a written description of the management practices, and
  2. A plot plan identifying the placement of any silt fence, check dams, or erosion control barriers.
  3. Erosion control mix mulch barriers may be utilized.
    - (a) The erosion control mix mulch shall meet the Maine Department of Environmental Protection's most current specifications for installation and maintenance.

### 552 Sawmill, Temporary

- A. Hours of Operation. The sawmill shall only operate during daytime hours, as defined in Section 300.
- B. Maximum Noise Limit at all property lines.
- |                            |          |
|----------------------------|----------|
| 1. Daytime Hours:          | 60 dBA   |
| 2. Nighttime Hours:        | 50 dBA   |
| 3. Temporary Chainsaw Use: | No Limit |
- C. Erosion Control. The temporary sawmill shall not cause the erosion and waterborne transportation of soil onto any abutting property.

### 553 Shipping Container

- A. General Standards: The following standards shall apply to all shipping containers in the Town of Windham:
1. Housing of Land Uses. Shipping containers shall not be used to conduct land use activities that are carried on in a principal building or an accessory building,
  2. Stacking. Shipping containers shall not be stacked one on top of the other,
  3. Floor Area. The floor area of a shipping container shall be measured by calculating the footprint of the container from its exterior walls,
  4. Location. Shipping containers shall not be located in any of the following areas:
    - (a) Parking spaces required by this Ordinance,
    - (b) Required front, side, or rear yard areas (*See Sec. 400 Zoning Districts*),

- (c) A location that reduces vehicular sight distance below minimum Maine Department of Transportation standards,
- (d) A location that would cause a hazard to the traveling public,
- (e) A location that impacts stormwater runoff.

#### B. Residential District Standards

1. No more than one (1) shipping container shall be allowed on any lot.
2. Permit Required: A permit shall be required for the installation of a Shipping Container in all residential zoning districts,
3. Time Limit: A Shipping Container shall not be located on site for more than six (6) months, with the exception that
  - (a) One (1) extension of not more than three (3) months may be granted at the discretion of the Code Enforcement Officer.
4. Permitted Shipping Containers: A Shipping Container shall only be permitted for the temporary storage of residential items under the following circumstances:
  - (a) While a resident is in the process of moving into or out of a home,
  - (b) While a home is being remodeled, or
  - (c) After a home or building has experienced a fire, flood, or other damaging event.
5. Permitted Items: Items such as, but not limited to, the following shall be permitted in a Shipping Container:
  - (a) Household furniture,
  - (b) Appliances,
  - (c) Bathroom fixtures,
  - (d) Clothing, and
  - (e) Building materials.

#### C. Non-Residential District Standards

1. The following standards shall apply to Shipping Containers that are currently located, or proposed, in a non-residential district:
  - (a) The total floor area of all shipping containers on site shall not exceed seven hundred (700) square feet.
    - (1) Additional shipping containers that exceed the seven hundred (700) square feet limitation shall not be allowed by variance.
  - (b) If the property on which the shipping container is located received a Site Plan approval on, or after March 13, 1991, the Planning Board shall be responsible for review and approval under the following standards:
    - (1) Conditional Use,
    - (2) Site Plan Review

- (c) The Shipping Container must come into compliance with this ordinance by March 21, 2001 unless good cause can be shown by the petitioner.
  - (1) After March 21, 2001, any existing shipping containers shall be removed from the site, unless,
    - (i) There is a pending conditional use application before the Zoning Board of Appeals.
    - (ii) There is a pending conditional use and site plan application before the Planning Board.
- (d) Shipping containers that are part of an existing commercial or industrial use, and are being actively used for the temporary storage and eventual shipping of goods, products, or materials that are manufactured or assembled as part of the commercial or industrial use, shall be allowed provided that:
  - (1) The location of the shipping containers is duly noted on the site plan if the project was reviewed by the Planning Board and/or the Board of Appeals, or the building permit plot plan if no Planning Board or Board of Appeals review was required.
  - (2) The same shipping container(s) shall not be located on site for more than thirty (30) consecutive days at a time.

D. Construction Project Standards:

- 1. Shipping containers may be placed on property where a construction project is occurring.
  - (a) The Shipping Container shall only be utilized for the storage of construction materials, equipment, tools, etc...
- 2. A permit shall not be required from the Code Enforcement Officer, Planning Board, and/or Board of Appeals.
- 3. The Shipping Container(s) shall be removed within thirty (30) days after the completion of the construction project.

**554 Solid Waste Dumpsters**

- A. All permanent solid waste dumpsters shall be installed on an appropriate concrete pad and shall be screened on all sides by fencing or vegetation. Vegetation must screen the dumpster within one growing season from the time it is planted.

**555 Streets**

- A. Public Streets. All Public Streets, as defined in Section 300 - and Private Roads submitted as part of a subdivision application - constructed on or after October 22, 2009 shall meet the street design standards in Section 900 Subdivision Review.

1. Waivers of the street design standards may only be granted by the Planning Board as part of a site plan or subdivision application.
- B. New or extensions of Private Roads created off existing Private Roads or Private Ways. No new Private Roads or extensions of existing Private Roads or Private Ways will be permitted unless all portions of the Private Roads or Private Ways that connect the new or extended Private Road with the nearest public street are upgraded to the applicable Private Road standards.
1. New Private Roads or extensions of existing Private Roads or Private Ways will be exempt from this requirement if the cumulative length of the new Road or Road extension(s) is no greater than the length of the required Frontage in the applicable Zoning District within a five year period. Note that the new Road or Road extension will still need to meet the requirements of Section 555.D. below.
- C. New Streets with direct connections to Public Streets. No new Private Roads will be permitted to directly access a Public Street. New Streets with direct access to a Public Street must be built to the applicable Local Street standard and offered to the Town for acceptance as a Public Street.
- D. Private Roads Not Part of a Subdivision Application.
1. **Applicability.** These standards apply to Private Roads used to obtain the required Frontage in the applicable zoning district. (*See "Developable Land" in Sec. 500 Performance Standards*)
  2. **Submission Requirements.** An application form and accurately scaled plan shall be prepared by a Maine Licensed Professional authorized by the State of Maine to design streets or roads. At a minimum, the plan shall include the location and width of the right-of-way, a plan view and profile view of the roadway, the location and size of culverts and proposed drainage features.
  3. **Review Authority.** All Private Roads application forms and plans shall be submitted to and approved by, the Director of Code Enforcement. For Private Roads that provide frontage to four (4) or more lots, the plan must be reviewed by the Town Engineer or consulting engineer.
  4. **Site Walk.** The Director of Code Enforcement may require a site walk with the applicant, or his or her authorized representative.
  5. **Recording.** Upon approval, a mylar copy of the private road plan shall be filed with the Town.
  6. **Construction Observation.** The Code Enforcement Officer may require that observations by the Town Engineer or consulting engineer be conducted during

construction. The property owner shall be responsible for the costs of all observations.

7. Final Approval. Prior to the issuance of any Certificates of Occupancy for the lots with Frontage on said Private Road, the applicant shall provide the following:
  - (a) Private Roads with three (3) or fewer lots. A statement, from the Maine Licensed Professional that prepared the plans, that the road was constructed in general conformance with the approved plans. The Director of Code Enforcement may observe the road to confirm that the road was constructed in general conformance with the approved plans.
  - (b) Private Roads with four (4) or more lots. A statement from a Licensed Maine Professional Civil Engineer that the road was constructed in general conformance with the approved plans. If the Town's consulting engineer reviewed the design and observed the construction, the Town's consulting engineer may provide the required statement.
8. Standards
  - (a) Design Standards. Private roads shall be designed to conform to the appropriate standards presented in Subsection 911.M.5.(b)(8) Street Construction Practices; and the standards for "Major or Minor Private Roads" in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.
  - (b) Street Lights. Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.
  - (c) Drainage. The private road shall have adequate provisions for drainage and stormwater runoff.
  - (d) Paved Apron. In addition to the standards in Section 522 Curb Cuts and Driveway Openings, a paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix C, Street Standards*).
  - (e) Gravel Surface Limit. Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units; provided; however, nothing in this paragraph shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private Roads providing access to eleven (11) or more lots shall meet the standards for a "Major Private Road" contained in Table 3 and Table 4 of Appendix B Street Standards. When



determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

- (f) **Dead End Streets.** The following standards shall apply to dead end private roads. (See Sec. 300 for definition of “Dead End Street”)

- (1) **Maximum Length.** Dead end private roads shall meet the following standards:

- (i) **Private Roads Served by Public Water.** There is no maximum length limit for private roads served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection (g) below shall apply.
- (ii) **Private Roads Not Served by Public Water.** Dead end Private Roads not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection (g) below, shall apply.
1. **Existing Rights-of-Way.** The maximum length of 1,000 linear feet shall commence at the terminus of any dead end rights-of-way existing on, or before, October 22, 2009.
  2. Any existing right-of-way which does not contain an improved private way existing on, or before, October 22, 2009 shall construct any future improvements in accordance with the standards for private roads contained in this Section to the greatest extent practical.

- (2) **Hammerhead Requirement:** At a minimum, a hammerhead turnaround is required at the terminus of all dead end private roads.

- (i) All hammerhead turn around shall meet the following standards:
- a) The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
  - b) The gravel or paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.
  - c) The width of the gravel or paved surface shall be equal to the street width.
  - d) The hammerhead shall have a minimum 25 foot turning radius.
  - e) Larger dimensions may be required by the Director of Code Enforcement to accommodate larger design vehicles anticipated to use the turnaround.

- (g) **Connection Requirements.** The following standards determine the number of connections a Private Road must have with an existing Local Street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections. When determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

Number of Lots or Dwelling Units	Minimum Connections
Lots: 30 or less	1
Lots: 31 or more	2
Units: 30 or less	1
Units: 31 or more	2

- (1) **Street Connection Separation Requirements.** Private Roads with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 of Section 900 Subdivision Review.

- (h) **Maintenance Agreement.** The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town until the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements for a public street contained in this Ordinance.

C. Sidewalks

- 1. Where required by this Ordinance, or by the Planning Board as a condition of subdivision or site plan approval, sidewalks shall be constructed in accordance with the standards in Tables 3 and 4 or Appendix B of this Ordinance.
- 2. **Accessibility.** Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.

Section 500 Amendments

Order 10-075; Date 04-27-10	Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets
Order 10-164; Date 09-14-10	Changes to Outdoor Sales
Order 10-230; Date 12-14-10	Addition of Restaurants in C1 zone
Order 11-206; Date 12-13-11	Addition of siting and regulation for Medical Marijuana Dispensaries
Order 12-014; Date 03-14-12	Changes to Backlot standards
Order 12-099; Date 08-14-12	Addition of Domesticated Chickens
Order 12-148; Date 10-23-12	Addition of Retirement Community and Care Facility Overlay District
Order 12-149; Date 10-23-12	Addition of Accessory Apartments
Order 13-001; Date 01-22-13	Change to waiver of Curb Cuts

Order 13-002; Date 01-22-13	Change to list of Controlled Access Streets.
Order 13-072; Date 05-14-13	Addition of Sidewalk Impact Fee
Order 14-164; Date 07-08-14	Changes to Automobile Repair Services, Addition of Automobile Storage Lot
Order 14-223; Date 07-08-14	Change of Conditional Use Submission deadlines
Order 14-387; Date 10-14-14	Addition of Automobile Auction Facility
Order 17-052; Date 03-28-17	Change to Accessory Apartment
Order 17-161; Date 10-10-17	Change to Developable Land; Streets; Deletion of Driveway; Lot, Backlot
Order 18-049; Date 04-20-18	Change to Streets, New or Extensions of Private Roads.
Order 19-057; Date 06-11-19	Addition of Contractor Services, Contractor Services Landscaping, Contractor Storage Yard, and Heavy Construction Services
Order 20-048; Date 05-26-2020	Addition of Marijuana for Personal Use and Marijuana Businesses; Deletion of Medical Marijuana
Order 20-151; Date 08-11-2020	Addition of Lot, Backlot
Order 20-211; Date 10-13-2020	Addition of Farm Enterprise