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**TOWN OF GOSHEN, NEW HAMPSHIRE**

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**ZONING ORDINANCE  
AND  
BUILDING ORDINANCE**

*As Amended on March 10, 2009*

April 20, 2009

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**TOWN OF GOSHEN, NEW  
HAMPSHIRE**

**ZONING ORDINANCE**

An ordinance regulating and restricting the use of land, and the location and use of buildings in the Town of Goshen, whether for business, residence or for other purposes; creating districts for such purposes and establishing the boundaries thereof; providing for changes in the regulation; restrictions and boundaries of such districts; defining certain terms used therein; providing for enforcement; establishing a board of adjustment; and imposing penalties.

**SECTION I. ADOPTION**

**1.01. PREAMBLE**

In pursuance of authority conferred by Chapter 31:60 – 89 and amendments, and for the purpose of promoting the health, safety, morals, prosperity, convenience or general welfare, as well as efficiency and economy in the process of development, of the inhabitants of the incorporated Town of Goshen by securing safety from fire, panic and other dangers, providing adequate areas between buildings and various rights-of-way, by preserving the rural charm now attached to our town, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements and by other means in accordance with a comprehensive plan, the zoning ordinance of the Town of Goshen, New Hampshire was adopted by the voters of Goshen in March 1970 and was amended by the voters of Goshen in 1981, 1988, 1989, 1992, 1995, 2002, 2003, 2004, 2005, 2006, and 2007.

**1.02. SHORT TITLE**

This Ordinance shall be known and may be cited as the “Town of Goshen, NH Zoning

Ordinance.” It is hereafter referred to as “this Ordinance.”

**SECTION II. DEFINITIONS AND EXPLANATIONS**

For the purpose of this ordinance, certain terms are defined as provided in this section:

“AGRICULTURAL USE” Land used for farming, dairy pasturage, apiculture, horticulture, floriculture, silviculture, animal husbandry, equine husbandry, poultry husbandry, and aquaculture.

“BUILDING INSPECTOR” The town official or employee designated by the Board of Selectmen to carry out the enforcement of these regulations.

“COMMERCIAL” Activities having to do with business or trade. An occasional yard sale or comparable type of activity shall not fall within such definition.

“DEVELOPMENT” Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

“DWELLING UNIT” A room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental, or lease, and physically separated from any other rooms which may be in the same structure, and containing independent cooking, sanitary, and sleeping facilities.

“EARTH REMOVAL” Commercial taking of sand, gravel, rock, soil, or construction aggregate.

“FRONTAGE” That portion of a lot bordering on a highway, street, or right-of-way.

“GROUNDWATER” Water within the Earth.

“HOME BUSINESS” Any business operated out of the residence of an individual by that individual. For the purposes of this ordinance, Home Businesses shall be classified as one of three different types: “Home Occupation,” “Simple Home Business,” or “Home-Based Commercial Use.” Each of these is defined separately in this section. Different restrictions apply to each type of home business.

“HOME-BASED COMMERCIAL USE” Any home business which does not fit the definition for a “Home Occupation” or “Simple Home Business.” Such a business requires a special exception in a non-commercial zone.

“HOME OCCUPATION” A business conducted entirely within a dwelling or its accessory buildings and carried on only by the residents of that dwelling, which use is clearly incidental and secondary to the residential use of the property and does not change the residential character or exterior appearance thereof.

“LIGHT COMMERCIAL” The following activities having to do with business or trade: Retail outlets or stores, gas stations, restaurants, and vendors of personal services occupying buildings containing no more than 15,000 square feet of floor space.

“MOBILE HOME” A vehicle so constructed as to allow its being used as a conveyance on a public street, and designed to allow occupancy for one or more persons. Such a vehicle is equipped with running water and sanitary facilities such as bath and toilet.

“NON-CONFORMING” Use of land, building, or premises which is not a use allowed by the provisions of this ordinance for the district in which it is situated.

“OPEN SPACE DEVELOPMENT” A residential subdivision of a tract of land

where housing units are grouped on lots of reduced dimensions. The remaining land in the tract, which does not have buildings or improvements thereon, shall be reserved as permanently protected open space. The density of an open space development shall not exceed the density prescribed for a conventional development in this ordinance.

“OVERLAY DISTRICT” A district superimposed on other districts, or portions thereof, in which special additional restrictions apply. Whenever provisions applicable to one district appear to conflict with any provision of the overlay district, the provision imposing the greater restriction or more stringent standard shall be controlling.

“PARKING LOT” An unimproved off-street area or one improved with gravel, concrete, asphalt or similar materials which is used or intended to be used for a parking area for multiple motor vehicles.

“PARKING SPACE” An off-street space for exclusive use as a parking area for one motor vehicle, with a minimum size of 10’ by 20’.

“PERMANENT BUILDING” Any building resting upon a foundation or otherwise legally defined as “real estate.”

“PERMANENT RESIDENTS” An individual or family using any building continuously as a residence for a period of six months or more.

“RECHARGE” Water being added to an aquifer by the natural processes of infiltration of precipitation.

“RECREATIONAL VEHICLE” A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent

dwelling but as temporary living quarters for recreational camping, travel or seasonal use. A recreational vehicle shall remain self-contained at all times and shall be fully licensed and ready for highway use.

“RESIDENTIAL” The use of land and building or premises for living units for one or more persons. Buildings with one dwelling unit shall be defined as houses. Buildings subdivided into two or more dwelling units shall be defined as apartments.

“RIGHT-OF-WAY” Present or proposed town, state, and federal highways and the land on either side of same as covered by statutes to determine the widths of public ways.

“SETBACK” The distance between the nearest portion of a building and a lot or right-of-way line, whichever is closer.

“SIMPLE HOME BUSINESS” A business conducted entirely within a dwelling or its accessory buildings and employing no more than two persons who do not reside on that property, which use is clearly incidental and secondary to the residential use of the property and does not change the residential character thereof.

“SMALL DETACHED BUILDING” Any building not larger than one hundred (100) square feet.

“TOURIST RELATED SERVICES” Such activities as Inns, Motels, and Campgrounds.

“WETLAND” Any area of soil(s) classified by the Soil Survey of Sullivan County as poorly drained and/or very poorly drained, or any area delineated as such by a Certified Wetlands Scientist. Any area that would constitute a “wetland” under the rules of the NH Wetlands Board, as may be amended from time to time, shall constitute a “wetland” for purposes of this Ordinance.

“WATER MINING” Withdrawal of groundwater at a rate greater than the rate of recharge.

### **SECTION III. DISTRICTING AND GENERAL PROVISIONS**

For the purpose of regulating the use of land and the location and construction of buildings, the Town of Goshen shall be considered as four districts with the following regulations and restrictions:

#### **A. DISTRICTS**

##### **A.1. Residential or Agricultural**

There shall be a district of Residential or Agricultural use only. Business is prohibited in this district except as hereinafter provided. This will include all areas of the town not otherwise defined as another district.

##### **A.2. Tourist Related**

There shall be a Tourist Related District along both sides of Brook Road from the southeast corner of Lot Number 098, Tax Map Number 209 (the “Bartlett” property) to the southwest corner of Lot Number 002, Tax Map Number 209 (the “Backside Inn” property). Only parcels with frontage on Brook Road within this section as of March 8, 1988 are included in the Tourist Related District. Within this section of Brook Road, the Tourist District shall extend 500 feet back along both sides of Brook Road or to the property line as it existed on March 8, 1988, whichever is less. All activities allowed in a Residential-Agricultural District shall be allowed in a Tourist Related District. All entrances and exits for tourist related activities shall be to Brook Road.

##### **A.3. Light Commercial**

There shall be a Light Commercial District extending from the intersection of Brook Road and Route 10, north on Route 10 for a distance of 1500 feet and south on Route 10

for a distance of 1000 feet, extending back from the road 500 feet or the existing property line, as of the date of passage of this amendment (March 8, 1988), whichever is less. All activities allowed in Tourist Related or Residential-Agricultural Districts shall be allowed in this district.

## **B. BUILDINGS**

### **B.1. Permitting**

No building shall be erected in Goshen without a valid building permit issued by the town official or employee designated by the Board of Selectmen. A driveway permit must be obtained before a building permit can be issued. All new residential buildings may require off-street parking to be provided at the rate of at least two (2) parking spaces per dwelling unit. In order to provide for the most efficient means of road maintenance, snow plowing, and access by emergency, police, and fire vehicles, no parking of vehicles within the street shall be permitted.

### **B.2. Occupancy**

No new house or apartment shall be occupied, or a vacated house or apartment shall be reoccupied, until a certificate of occupancy has been issued by the town official or employee designated by the Board of Selectmen.

### **B.3. Buildings per Lot**

There shall only be one building allowed for residential purposes on a lot except when a special exception has been granted by the Zoning Board of Adjustment; provided, however, that in order to grant such a special exception, the board must find, in addition to the other standards contained in this ordinance, that the lot involved is of sufficient size that the overall density on the lot does not exceed one dwelling unit per three (3) acres.

### **B.4. Dwelling Units per Building**

Three apartments or units for permanent or temporary residents shall be the maximum allowed for any one building except when a special exception has been granted by the Zoning Board of Adjustment. In no case of multiple dwelling units within one building shall the overall density on the lot exceed one dwelling unit per three acres.

### **B.5. Slopes 25% or Greater**

No building permits will be granted to build buildings on land designated on official town soils and elevation maps as having a slope of 25% or greater.

### **B.6. Slopes 15%-25%**

No building permits will be granted to build buildings on land designated on official town soils and elevation maps as having a slope of 15%-25% except by special exception granted by the Zoning Board of Adjustment following presentation of satisfactory evidence that septic, erosion, and access factors will be adequately addressed.

### **B.7. Alternation of Terrain**

No alteration of terrain or excavation on land designated on official town soils and elevation maps as having a slope of 25% or greater shall occur without a special exception granted by the Zoning Board of Adjustment following presentation of satisfactory evidence that erosion and access factors will be adequately addressed. Provided, however, that for an excavation requiring a Special Exception under Section V (F) of this ordinance, only one Special Exception shall be required and the factors otherwise considered under this section shall be examined by the Zoning Board of Adjustment in conjunction with Section V (F).

### **C. LOTS**

Lots shall be at least three (3) acres in size, providing however, that in proposals to subdivide land, one lot of not less than two acres may be created. In this context, land refers to all lots in existence on 03/13/1979.

### **D. SETBACKS, BUILDING HEIGHT, AND FRONTAGE**

There shall be observed the following provisions in the construction of new buildings or in the relocation of existing ones:

#### **D.1. Front Setback**

Front Setback: Minimum distance between any building and a right-of-way shall be fifty feet (50').

#### **D.2. Side and Rear Setback**

Side and Rear Setback: Minimum distance from lot side lines and lot rear lines to any building shall be forty feet (40'), providing, however, that small detached buildings may be approved to within twenty feet (20') of a lot line.

#### **D.3. Building Height**

Height: Maximum height of any building shall be thirty-five feet (35'), with determination being the vertical distance from the average finished grade surrounding the building to a point midway between the highest and lowest points of the highest roof. Silos and barns for agricultural purposes and church towers are excepted.

#### **D.4. Frontage**

Frontage: The lot on which a building is sited shall have a minimum of one hundred seventy-five feet (175') of frontage on a regularly maintained public road or on a road built and maintained to Town specifications.

### **E. HOME-RAISED PRODUCE**

Home-raised produce may be bought and sold and exposed for sale in any district. Off highway parking may be required if the Selectmen deem it necessary.

### **F. AREA AND YARD REQUIREMENTS**

No building, residence, or mobile home may be located anywhere in any district unless it meets all of the area and yard requirements of that type of building in that district.

### **G. OUTDOOR ADVERTISING**

For the purpose of this ordinance, outdoor advertising shall be classified as commercial use, and shall be regulated according to the provisions of paragraph V.E.

### **H. WETLANDS DEVELOPMENT**

There shall be no development or improvement in wetland areas without a special exception. The Zoning Board of Adjustment may grant such a special exception if and only if it finds that the application meets the criteria of Section IX, B and, in addition: (a) That the proposed use is consistent with the intent of these Regulations, and is approved by other agencies or boards which have jurisdiction; (b) That the proposed use or structure cannot reasonably be located outside the wetland; (c) That the proposal, considered together with any proposed mitigation measures shall result in no net adverse effect on the natural functions of the wetland, including the capacity to filter pollution, trap sediment, recharge groundwater, retain and absorb chemicals and nutrients, produce oxygen, store and moderate flood waters, and provide habitat for aquatic or wetlands species; (d) That the proposal adequately protects water quality and quantity, and protects soil from erosion by specifically-described erosion control measures; and (e) That the plan presented represents the feasible alternative for achieving the

applicant's objectives with the least impact on the wetland. (Note: In designated Floodplain regions, special provisions of the Town's Floodplain Development Ordinance, as presented in a later section of this ordinance, may be applicable.)

#### **I. WATER MINING**

Water Mining is prohibited in all districts.

#### **J. TAR-MIX, ASPHALT, AND GRAVEL-CRUSHING PLANTS, AND HAZARDOUS WASTE**

No tar-mix, asphalt, or gravel-crushing plant shall be set up within the borders of the Town of Goshen, nor shall any hazardous wastes be deposited within the borders of the Town of Goshen.

#### **K. PORTABLE ROCK CRUSHERS**

No rock crushers shall be allowed in the Town of Goshen, provided, however, that the owner of any gravel pit with a valid excavation permit shall be allowed to make use of a portable crusher for a two-week period after obtaining from the Planning Board a permit to operate such crusher. No more than one such permit per year shall be granted to any gravel pit operator.

#### **L. LIGHTING**

In the interest of maintaining its historic character and preventing further reduction of visibility of the night sky, insuring efficient use of lighting, and reducing unsafe or annoying lighting conditions, the Town of Goshen has adopted the following lighting ordinance:

1. Any new outside lighting, whether for area lighting, sign illumination, building illumination, or other purpose, must be shielded so that it will not constitute a nuisance or hazard caused by glare to neighbors, pedestrians, or drivers.
2. Any new outside lighting must also be shielded so that the fraction of light

projected from any lamp, its lens structure, or any associated reflector, in a direction above a level plane, is negligible. (Determination of compliance shall be made in the judgment of the Building Inspector. Where this determination is in dispute, and a more technical definition is required, the standard of negligibility shall be a fraction of less than 3 percent of the total light output from any lamp, or radiant flux of less than 100 Watts, whichever is less.)

3. A permit for the erection of an illuminated sign, or the illumination of an existing, non-illuminated sign, must be obtained from the Building Inspector. Such a permit will be granted upon confirmation that the proposed sign complies with all requirements stated in this paragraph (III.L).
4. New signs or newly lit signs may be illuminated only by continuous indirect white light, with illumination from above. Alternatives to overhead sign lighting shall be permitted by special exception, provided that the illumination is strictly confined to the area of the sign.
5. The following types of outdoor lighting shall be exempt from the requirements of this article:
  - a. Lighting on residential properties, where no lamp used is brighter than a standard 100-Watt incandescent lamp.
  - b. Seasonal/decorative/holiday lighting displays using multiple low wattage bulbs.
  - c. All temporary lighting required for construction projects, related to road construction and repair, installation of sewer and water facilities and other public infrastructure.



greater restriction or more stringent standard shall be controlling.

**O. RECREATIONAL CAMPGROUNDS AND CAMPING PARKS**

Recreational campgrounds and camping parks shall conform to the following provisions:

1. Each tent campsite shall conform to the minimum size required by RSA 216-I:2, excluding roadways that are not part of an individual site.
2. Each recreational vehicle or recreational camping cabin campsite shall be not less than 2,000 square feet excluding roadways that are not part of an individual site.
3. The maximum number of campsites shall be 15 sites per acre of gross area of the campground or camping park.
4. Recreational vehicles shall be fully licensed at all times and shall not be permitted to deteriorate to a state of repair that would prevent a return to highway use.
5. The dimensional requirements of Section III.D of this Ordinance shall apply to the exterior dimensions and perimeter of recreational campgrounds and camping parks; provided, however, that tents, recreational vehicles, and camping cabins shall be subject to the 40-foot rear and side yard setback distance from the exterior boundaries of the campground or camping park, rather than the reduced 20-foot distance applicable to small detached buildings.

**P. OCCUPANCY OF RECREATIONAL VEHICLES**

Occupancy of recreational vehicles which results in such a vehicle becoming an occupant's primary residence or domicile is prohibited in the town of Goshen, whether inside a campground or camping park or at

any other location, unless the recreational vehicle conforms to the Town of Goshen Building Ordinance and state regulations.

**Q. MAXIMUM HEIGHT OF STRUCTURES**

The maximum height of any structure other than a building shall be thirty-five feet (35'), with the height determination being the vertical distance from the average finished grade surrounding the structure to the highest point of the structure, except by special exception granted by the Zoning Board of Adjustment. Personal Wireless Service Facilities are exempted from this provision and are regulated as set forth in Section XIII of this ordinance.

**R. NOISE REGULATION**

**R.1. General Noise Provisions**

No person owning, leasing or controlling any property or any source of sound shall willfully, negligently, or through failure to provide necessary equipment, service or maintenance or to take adequate precautions, cause a breach of the peace, public inconvenience, annoyance or alarm, or create a risk thereof, by making loud or unreasonable noises in a public place, or making loud or unreasonable noises in a private place which can be heard in a public place or other private places, which noises would disturb a person of average sensibilities.

**R.2. Sound Amplification**

Operation or use of any mechanical device, machine, apparatus, or instrument for the reproduction, intensification, or amplification of the human voice, music, or any sound from any public place or private place, including a motor vehicle, in such manner that such sound produced would disturb or annoy a person of average sensibilities owning, using, or occupying other property in the neighborhood is prohibited.

### **R.3. Motor Vehicle Use**

Operating any motor powered vehicle in a public place or private place so as to produce excessive, loud or unreasonable noise in a public place or other private place by any of the following means is prohibited:

- a. Misuse of power, acceleration or traction so as to spin the wheels or lose traction, sometimes known as “laying down rubber” or “peeling rubber,” or excessive acceleration where there is no emergency.
- b. Misuse of brake and stopping power in the deceleration of a motor vehicle where no legitimate emergency exists.
- c. Misuse of power, acceleration or traction by means of rapid upshift, downshift or changing of transmission gears.
- d. Racing of engine by means of the accelerator, carburetor, or gear selector, when the motor vehicle is either in motion or stationary.
- e. Operation of any mechanically-powered vehicle, including off-highway recreational vehicles as defined in RSA 215-A, between the hours of 8 p.m. and 8 a.m., in a continuing, repetitious manner, either back and forth or in laps around a looped course, whether for purposes of racing or otherwise.

### **R.4. Noise Affecting Residential Use**

It shall be unlawful, within three hundred (300) feet of any building in use as a dwelling, for any person to carry on any of the following activities:

- a. Making loud or unreasonable noises by operating any mechanically powered saw, grinder, drill, electric hedge trimmer, lawn edger, leaf blower, lawn mower or garden tool, or similar device used outdoors with the exception of snow removal equipment, between the hours of 10:00 p.m. and 6:00 a.m.

Monday through Friday and between the hours of 10:00 p.m. and 8:00 a.m. on Saturday and Sunday; or

- b. Making loud or unreasonable noises by loading, unloading, opening, closing, or otherwise handling boxes, crates, containers, building materials, trash cans, dumpsters, or similar objects and materials between the hours of 10:00 p.m. and 6:00 a.m.; or
- c. Discharging firearms (gun, pistol, cannon or other firearm) or other explosive devices, between the hours of 8:00 p.m. and 8:00 a.m. Monday through Sunday. Nothing in this provision shall restrict discharging of firearms while hunting wildlife in accord with all applicable state laws.
- d. The above restrictions shall not apply if the only dwelling within three hundred feet is a single-family dwelling, and the person carrying on the activity is a resident of that dwelling or is acting with express permission of such a resident.

### **R.5. Construction**

The generation of any noise from construction activity, if audible from within a dwelling located on any property other than the property where the noise originates, is prohibited, except for noise generated:

- a. Between 7:00 a.m. and 5:30 p.m. on weekdays; or
- b. Between 9:00 a.m. and 5:30 p.m. on Saturdays; or
- c. By non-commercial construction activity performed by or under the direction of the property owner, between 9:00 a.m. and 5:30 p.m. on Sundays and on state and federal holidays.

For the purposes of this ordinance, construction activity is defined as any excavation, highway construction, land development or land clearing work, or the

erection, demolition, alteration, repair, or relocation of any building or structure, which uses powered equipment such as bulldozers, graders, backhoes, trucks, tractors, earth moving equipment, front end loaders and log skidders, compressors, jack hammers, motorized, or power hand tools, manual tools, or equipment of a similar nature.

Any commercial excavation operation covered by Goshen's Excavation Regulations shall adhere to the provisions related to days and hours of operation and noise abatement measures as specified in the Town issued permit for said operation.

#### **R.6. Noise Measurement Standards**

Without limiting the general applicability of any other paragraph in this Subsection, noise shall be conclusively presumed to be a violation of this Subsection if, when measured at or outside the boundary of the property on which the sound originates, or, in the case of sound originating on highways or other public property, when measured at or within the boundary of any nearby private property:

- a. The 24-hour equivalent A-weighted sound level exceeds 65 dBA between 7 a.m. and 10 p.m., or 55 dBA between 10 p.m. and 7 a.m., provided however that if the sound is cyclically varying, or contains repetitive impulses, the above limits shall be reduced by 5 dBA; or
- b. The A-weighted sound level produced by the source exceeds by 10 dB or more the A-weighted residual ambient sound level that exists without the noise source operating; or
- c. The sound includes one or more audible tonal components not masked by the residual ambient sound.

For purposes of this Section, the residual ambient sound level means the background

A-weighted sound level which is exceeded ninety percent of the time by the composite of sounds from all environmental sources during the time period of observation, exclusive of the source under consideration.

#### **R.7. Exclusions and Exceptions**

The Board of Selectmen may, by issuing a special use permit, grant relief from any of the provisions of Section III.R of this Ordinance if they find: (a) that strict conformity with the noise provisions of this Ordinance would render unfeasible or impractical an otherwise-permissible use or development of land; (b) that there are no reasonable alternative means of achieving the otherwise-permissible goals; (c) that the need for relief from the noise provisions will be limited in duration; *and* (d) that the relief granted will be consistent with the purposes of these noise provisions, and will not entail an unreasonable noise impact on other landowners or the public. Prior to granting such a special use permit, the Selectmen shall hold a hearing with notice as set forth in RSA 676:7. Any special use permit granted shall contain such written conditions as may be necessary to protect the neighborhood and the public, and shall specify an expiration date.

The provisions of Section III.R shall not apply to:

- a. Routine or emergency Town, State, or a public utility company's work including solid waste collection, street sweeping, street and sidewalk plowing, snow removal, and other periodic work necessary for the Town, State, or a public utility company to maintain its public streets, roads, and infrastructure.
- b. Other emergency work is exempt from hours of operation restrictions. Emergency work is work made necessary to: 1) restore property to a safer condition following a public

calamity, 2) to protect persons or property from an imminent exposure to danger, or 3) to provide electricity, water or other public utilities when public health or safety are involved.

- c. Noises of safety signals, warning devices, and emergency pressure relief valves.
- d. Noises resulting from any authorized vehicle, when responding to an emergency call or acting in time of emergency.
- e. Non-amplified human voices and crowd noises generated at gatherings open to the public.
- f. Bells, chimes or carillons associated with public or religious buildings such as churches and schools, if such sources exist as of the effective date of this Ordinance, or are hereafter installed pursuant to a valid site plan approval.
- g. Public parades and gatherings licensed by the Selectmen pursuant to RSA 286.2, or fireworks displays which have been properly permitted pursuant to RSA 160-B:7, and which are conducted in accordance with any and all conditions and specifications included in such license or permit.

### **R.8. Penalties**

Violations of this Section III.R which occur on private property may be enforced in any of the ways provided by state law for the enforcement of land use ordinances, including but not limited to RSA 676:15, 676:17, 676:17-a and 676:17-b. All fines collected shall be for the use of the Town.

## **S. OUTDOOR WOOD-FIRED HYDRONIC HEATERS**

### **S.1 Definitions**

"Clean wood" means wood that has not been painted, stained, coated, preserved, or

treated with chemicals such as copper chromium arsenate, creosote, or pentachlorophenol. The term does not include construction and demolition debris as defined in RSA 149-M:4, IV-a.

"EPA" means the United States Environmental Protection Agency.

"Outdoor wood-fired hydronic heater" (OWHH) or "outdoor wood boiler" means a fuel burning device:

- Designed to burn wood or other solid fuels;
- That the manufacturer specifies for outdoor installation or in structures not normally occupied by humans, including structures such as garages and sheds; and
- Which heats building space and water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

"Phase I OWHH" means an OWHH that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.6 pounds per million British Thermal Units input and is labeled accordingly.

"Phase II OWHH" means an OWHH that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million British Thermal Units output and is labeled accordingly.

### **S.2 Permit Requirements**

No OWHH may be installed or relocated from one lot to another lot in any district without first obtaining a permit from the building inspector. Any new installation or relocation of an OWHH must be inspected by the building inspector prior to use.

### **S.3 Unit Requirements**

Only a Phase II OWHH, as defined in this section, or an OWHH that has been certified or qualified by the EPA as having a particulate matter emission limit of less than 0.32 pounds per million British Thermal Units output and is labeled accordingly may be installed in any district. No person shall install a Phase I OWHH, as defined in this section, or any OWHH that is not EPA certified, in any district. No person shall relocate any OWHH on the same lot without a building permit and such relocation must follow the setback and stack height requirements in this section.

### **S.4 Setback Requirements**

No person shall install a Phase II OWHH or an OWHH that has been certified or qualified by the EPA as having a particulate matter emission limit of less than 0.32 pounds per million British Thermal Units output and is labeled accordingly, unless it is at least 100 feet from any property line, is no less than 50 feet from the structure it serves, and is at least 300 feet from any residence or place of business not served by the OWHH.

The relocation on the same lot of any OWHH previously installed on that lot must adhere to the requirements in this section for a new installation. Nothing in this section shall be construed to limit authority, as specified in RSA 147.

### **S.5 Permitted Fuels**

Permitted fuels means any fuel burned in an OWHH:

- Clean wood;
- Wood pellets made from clean wood;
- Home heating oil, natural gas, or propane that complies with all applicable sulfur limits and is used as

a starter or supplemental fuel for dual-fired OWHHs

### **S.6 Prohibited Fuels**

Prohibited fuels means any fuel burned in an OWHH other than permitted fuels. Prohibited fuel includes but is not limited to:

- Wood that does not meet the definition of clean wood,
- Garbage, refuse, tires, yard waste, materials containing plastic or rubber,
- Petroleum products, including asphalt products, other than those that are permitted fuels,
- Paints and paint thinners, chemicals, coal,
- Plywood, particleboard, manure or other animal products or wastes.

### **S.7 Exemption.**

An OWHH that is specifically designed to burn wood pellet fuel with metered fuel and air feed and controlled combustion engineering, which is operated according to manufacturers' specifications and burns only wood pellet fuel shall be exempt from this section.

## **T. SMALL WIND ENERGY SYSTEMS ORDINANCE**

### **T.1. Purpose**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy

systems to ensure compliance with the provisions of the requirements and standards established herein.

## **T.2. Definitions**

**Meteorological tower (met tower).** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time either for instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**Modification.** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

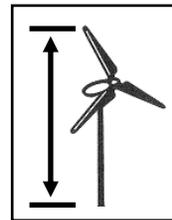
**Net metering.** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**Power grid.** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

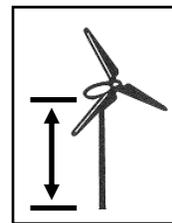
**Shadow flicker.** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

**Small wind energy system.** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**System height.** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



**Tower.** The monopole, guyed monopole or lattice structure that supports a wind generator.



**Tower height.** The height above grade of the fixed portion of the tower, excluding the wind generator.

**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

## **T.3. Procedure for Review**

- a. **Building Permit:** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit

shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

b. Application: Applications submitted to the building inspector shall contain a site plan with the following information with respect to the applicant's property and all other areas within a 1,000 foot radius of the proposed tower location:

- i. Property lines and physical dimensions of the applicant's property and all other areas within a 1,000 foot radius of the proposed tower location.
- ii. Location, dimensions, and types of existing major structures on the property and on all other areas within a 1,000 foot radius of the proposed tower location .
- iii. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
- iv. Tower foundation blueprints or drawings.
- v. Tower blueprints or drawings.
- vi. Setback requirements as outlined in this ordinance.
- vii. The rights-of-way or traveled ways of all public highways, private roads, and any shared driveways used by more than one landowner that are contiguous with the property or located within a 1,000 foot radius of the proposed tower location.
- viii. Any overhead utility lines on the property and all other areas

within a 1,000 foot radius of the proposed tower location.

- ix. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - x. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - xi. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - xii. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - xiii. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xiv. List of abutters to the applicant's property and all other property within a 1,000 foot radius of the proposed tower location.
- c. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to

have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

- d. Notices under (c) above shall inform the recipients of a date, at least 30 days from the date of the notice, upon which the permit is proposed to be issued, and shall further inform recipients of where the application materials may be reviewed, and of the opportunity to submit written comments to the building inspector during the 30-day period. Any person aggrieved by the issuance of such a permit may administratively appeal to the Zoning Board of Adjustment pursuant to Section IX(A) of this Ordinance and RSA 676:5.

#### **T.4. Standards**

The building inspector shall evaluate the application for compliance with the following standards;

- a. Setbacks: There is no setback requirement for occupied buildings on participating landowner property. The setback requirement for occupied buildings on abutting property, property lines of abutting property and utility lines, and public roads shall be 1.5 times the system height. The setback shall be measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.
  - i. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b. Tower: The maximum tower height shall be restricted to 35 feet above the

tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

- c. Sound Level: The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for a small manufacturer identification label or appropriate warning signs.
- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The

purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

- i. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to, information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground.
  - ii. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - iii. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i. **Approved Wind Generators:** The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State

Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

- j. **Utility Connection:** If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k. **Access:** The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- l. **Clearing:** Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

#### **T.5. Abandonment**

- a. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- b. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - i. Removal of the wind generator and tower and related above-grade structures.

- ii. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- c. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- d. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

#### **T.6. Violation**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

#### **T.7. Penalties**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as provided in RSA 676:16 through 676:18.

### **SECTION IV. AGRICULTURAL USE**

#### **RAISING AND SLAUGHTERING ANIMALS OR POULTRY**

Any agricultural uses as defined in these regulations are allowed other than as described below:

The slaughtering of animals or poultry, except such as are raised for use by the owner or occupant, and the raising of animals and/or poultry for commercial purposes are permitted only by special exception, subject to the following regulations:

#### **LOT AND BUILDING REQUIREMENTS**

1. A lot shall be eight (8) or more acres in area;
2. A building for these purposes shall be placed at least two hundred feet (200') from any right-of-way, side lines, or rear line.
3. Before approval by the Zoning Board of Adjustment, a special public hearing shall have been held, following due warning as required by law, and the proposed use shall not cause hazard to health, property values or safety through

fire, traffic, unsanitary conditions or through excessive noise, vibration, odor, or other nuisance features.

## **SECTION V. COMMERCIAL USE**

### **A.1. UNDUE HAZARDS OR OFFENSIVE BUSINESS**

No business shall be allowed which could cause any undue hazard to health, safety, or property values, or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, or similar reason.

### **A.2. HOME BUSINESSES**

Home Businesses will be allowed with restrictions depending upon their classification, as follows:

#### **A.2.a. Home Occupation**

A use which is classified as a “Home Occupation” shall be allowed in all districts, with no permit required. A use shall be classified as a “Home Occupation,” provided that it fits the general definition given in Section II, and meets the following specific criteria. A Home Occupation:

- i. Must not employ any persons who do not reside on the property in question.
- ii. Must involve no exterior display, and no outside storage of equipment, machinery, or materials.
- iii. Must not involve any change in the exterior character of the building, nor require the creation of any parking areas or accessory buildings visible to the street or to abutters.
- iv. Must not by their operation have an adverse effect upon: The character of the area in which the proposed use will be located; the highways and sidewalks located in the area, or the use thereof; or Town services and facilities.

v. Must have no adverse effect upon property values, and must not create a nuisance due to noise, vibration, excessive traffic, noxious odor, or similar conditions.

vi. Must not cause any undue hazard to health and safety.

#### **A.2.b. Simple Home Business**

A use which is classified as a “Simple Home Business” shall be allowed in all districts, provided that a permit for such use is first obtained from the Building Inspector. A permit for the operation of a simple home business shall be granted only upon confirmation that the proposed use fits the general definition given in Section II, and meets the following specific criteria. A Simple Home Business:

- i. Must not employ more than two (2) persons who do not reside on the property in question.
- ii. Must involve no exterior display, and no outside storage of equipment, machinery, or materials, except that a small, unlighted sign may be permitted, subject to the general restrictions of paragraph V.E. The permit required for such a sign may be granted as part of the permit for the Simple Home Business.
- iii. Must otherwise meet the criteria applicable to a “Home Occupation,” stated in paragraphs V.A.2.a.iii through V.A.2.a.vi of this ordinance.

#### **A.2.c. Home-based Commercial Use**

A home business which cannot be classified as a “Home Occupation” or “Simple Home Business” shall be classified as a “Home-Based Commercial Use.” All general regulations applicable to Light Commercial uses shall apply to a Home Based Commercial Use. Note: Such use is allowed in the Light Commercial district only, unless

a special exception is obtained, as provided in paragraph V.I.

**A.2.d. Agricultural Use**

For the purposes of this ordinance, an agricultural use which meets the definition given in Section II shall not be classified as a home business, and the regulations set forth in this paragraph (V.A.2) shall not be applicable to such use.

**B. SETBACKS AND FRONTAGE**

Sufficient acreage shall be included to allow the following provisions:

**B.1. Front Setback**

Not less than seventy-five feet (75') from any building or parking lot to a right-of-way, with both an exit and an entrance and with grass and/or beautification in the buffer area.

**B.2. Side and Rear Setback**

Not less than fifty feet (50') from a building or parking lot to the lot line.

**B.3. Frontage**

The lot on which a building is sited shall have not less than one hundred seventy-five feet (175') of frontage on a regularly maintained public road or on a road built and maintained to Town specifications.

**C. OFF-STREET PARKING**

Sufficient off-street parking shall be provided to accommodate all reasonably anticipated patrons and employees. In order to provide for the most efficient means of road maintenance, snow plowing, and access by emergency, police, and fire vehicles, no parking of vehicles within the street shall be permitted.

**D. COMMERCIAL OPEN SPACE**

Any new commercial enterprise shall provide, for each one (1) square foot of building space, three (3) square feet of open space. Developed space includes all areas

occupied by buildings, parking lots, driveways, and other man-made improvements. The area occupied by a commercial building shall be the sum total of all floors.

**E. OUTDOOR ADVERTISING**

Outdoor advertising shall be permitted only in conformity to the following regulations:

1. An outdoor sign shall not be larger than six (6) square feet. A larger sign, of up to twenty (20) square feet in size, may be permitted by special exception, provided that the proposed sign is located on the premises of the business advertised, and is otherwise in compliance with all other restrictions set forth in this ordinance.
2. It shall not be placed within twenty-five feet (25') of a road centerline nor within one hundred-fifty feet (150') of an intersection unless affixed to a building and not extending beyond or above the same by more than three feet (3').
3. Illumination shall only be by continuous non-flashing and non-colored light and shall conform to the provisions of Section III.L.
4. A zoning permit for erection shall be procured from the Building Inspector at the usual fee.
5. Permanent advertising shall be permitted only on the premises of the commercial property advertised.
6. Off-premises advertising may be allowed only by special exception.

**F. REMOVAL OF EARTH MATERIALS**

Before removal of earth (soil, rock, sand, or gravel or similar material), a special exception must be received from the Zoning Board of Adjustment, as provided in paragraph V.I. Once any such special exception is granted, a permit must be

obtained from the Planning Board, according to the provisions of NH state statute RSA 155-E. No crushing equipment shall be allowed except as provided in Section III.K. When the removal of materials is completed, sufficient grading must take place to allow covering with two inches of topsoil and seeding with a suitable cover crop, except where ledge rock is exposed. All permits terminate upon change of ownership. The Planning Board may require the posting of a bond with the Town Treasurer to insure compliance.

### **G. COMMERCIAL SUBDIVISIONS**

Commercial Subdivisions of less than three acres land area may be approved by the Planning Board upon submission of evidence satisfactory to the Planning Board that all regulations established for Commercial Subdivisions have been met.

### **H. SUMMARY OF COMMERCIAL USE PROVISIONS**

The following commercial uses are allowed without approval by the Zoning Board of Adjustment, so long as all standards contained in A through G above are followed, and all other applicable standards in this Ordinance are met:

#### **H.1. Light Commercial Uses**

Light Commercial uses, as defined in Section II, if located in the Light Commercial District;

#### **H.2. Tourist Related Services**

Tourist Related Services, as defined in Section II, if located in either the Tourist Related District or the Light Commercial District; or

#### **H.3. Home Occupations**

Home Occupations and Simple Home Businesses, as defined in Section II, located in any district, as set forth in A.2 above.

### **I. COMMERCIAL USES THAT REQUIRE SPECIAL EXCEPTIONS.**

Commercial uses located outside the applicable districts indicated in V.H are allowed only by special exception granted by the Zoning Board of Adjustment as set forth in Section IX of this Ordinance, including removal of earth materials in any district, Light Commercial Uses in the Tourist Related or Residential-Agricultural districts, or a Tourist Related Business in the Residential-Agricultural district. Such special exception may be granted only if all standards contained in A through F above are followed, and all other applicable standards in this Ordinance are met.

Commercial uses other than those referred to in this section are prohibited in the absence of circumstances justifying a variance.

### **SECTION VI. NON-CONFORMING BUILDINGS, LAND, OR USES**

#### **A. USE AND SIZE OF PROPERTIES EXISTING ON MAY 10, 1970**

All non-conforming properties in active use when this ordinance was passed and adopted (March 10, 1970) may continue indefinitely in their use and size as at that time.

#### **B. BUILDING EXPANSIONS**

Any and all non-conforming buildings, whether commercial or otherwise, may be altered but may not exceed the height limits as defined in Section III.D.3. Any proposed structural expansion that could not conform to provisions of the Zoning Ordinance shall require a special exception from the Zoning Board of Adjustment. No expansions along rights-of-ways shall be approved which decrease setback requirements, or the existing setback if already below minimum. In expansion on undersize lots the Zoning Board of Adjustment may reduce side and rear setbacks to not less than twenty feet (20') from a lot line providing, however,

that no structure shall be expanded closer than thirty-five feet (35') of an abutter's building.

### **C. BUILDING RESTORATION**

Any non-conforming building which is partially or totally destroyed by reason of obsolescence, fire or other act of God may be restored, remodeled and operated – if the same is done within two years providing, however, that proximity to a lot line or right-of-way may be no nearer than the lesser of the original building and setbacks defined in Sections III.D.1 and III.D.2 (general) or Sections V.B.1 and V.B.2 (commercial), and height does not exceed the limits defined in Section III.D.3. Any expansion during restoration shall conform to Section VI.B above.

### **D. NON-CONFORMING LAND**

Any lots that existed at the time that this ordinance was originally adopted on March 10, 1970 and that were rendered undersized by this ordinance for building purposes are exempt from the lot size requirement and the length of frontage requirement for residential or commercial use provided that setback requirements are met, and provided that the lot has access and some frontage satisfying RSA 674:41. The Zoning Board of Adjustment may grant special exceptions to setback requirements on non-conforming lots, however, no building may be constructed within thirty-five feet (35') of an abutter's building, or within fifty feet (50') of a highway right-of-way. In no case shall the Zoning Board of Adjustment grant special exceptions to reduce side and rear setbacks to less than twenty feet (20') from any lot line. The Zoning Board of Adjustment may grant a special exception to reduce the setback between the right-of-way and a parking lot to less than seventy-five feet (75'), but not less than fifty feet (50'), following presentation of satisfactory

evidence that public safety, noise, and visual impact will be adequately addressed.

### **E. NON-CONFORMING USE**

A non-conforming use of a building or tract may not be changed to another non-conforming use without a special exception from the Zoning Board of Adjustment. The reactivation of a non-conforming use after more than one year of deactivation of that use shall also require a special exception. Approval of said special exception may be withheld or restricted as if the Board were reviewing an application for a new commercial use.

### **F. RESOLUTION OF ISSUES**

Questions about the status of, extent of, or any change or expansion of, a non-conforming use of a building shall be resolved by the Building Inspector subject to appeal to the Zoning Board of Adjustment.

## **SECTION VII. OPEN SPACE DEVELOPMENTS**

### **A. OBJECTIVE**

Open Space is intended to enable and encourage flexibility of design in residential subdivisions in the Town of Goshen. By allowing reduced lot sizes, housing areas shall be developed so as to promote the most appropriate use of land; to facilitate economical and efficient provision of public services; to allow land use patterns which preserve trees, outstanding natural topography, and geological features, and prevent soil erosion; to preserve the natural and scenic qualities of the open land in the Town for conservation and recreation; all in accordance with the objectives of the Master Plan.

### **B. PERMITTED USE**

An open space development shall be permitted in any zoning district. An "open space development" is defined as a

subdivision where, instead of subdividing the entire tract into lots meeting the minimum lot size otherwise required by this ordinance, a similar number of dwelling units or buildings is clustered on lots or building sites of reduced dimensions, with the remaining land conserved as open space. The permitted land uses within such a development shall be consistent with district regulations.

### **C. TYPE OF REVIEW**

An open space development shall require subdivision approval by the Planning Board, regardless of whether any lot lines are created, or what form of ownership is contemplated. The Building Inspector, or such other person as designated by the Board of Selectmen, may issue a zoning permit after the Planning Board has approved the final plat under the Goshen Subdivision Regulations.

### **D. AREA AND DIMENSIONAL REQUIREMENTS**

The minimum overall tract size shall be 12 acres of developable land. The developable land area is that portion of the tract remaining after deducting the wetlands, floodplain, and slopes 25% or greater. No building shall be located closer than 50 feet from the right-of-way line of any exterior street, nor 30 feet from any other exterior tract boundary. No occupied building shall be located less than 50 feet from any other occupied building, however the Planning Board may reduce this requirement if it believes doing so will enable the enhancement of the size or quality of the open space parcel as set forth in paragraph F. Building locations, or building envelopes representing the siting limits for each building, shall be shown on the plan, and shall be considered conditions of approval. The above requirements shall supersede inconsistent area and dimension requirements elsewhere in this ordinance.

### **E. DENSITY**

The overall maximum number of dwelling units permitted in an open space subdivision shall be determined by dividing the total area of developable land of the tract by the applicable minimum lot size. The overall maximum number of dwelling units in an open space development shall not exceed that which would be permitted for a conventional development on the same tract under the other provisions of this ordinance; provided, however, that the Planning Board may in its discretion grant a density bonus of no more than 20% if it finds that the proposed open space parcel, as set forth in paragraph F, provides a public benefit of exceptional quality. Notwithstanding Section III, B.4 of this ordinance, the Planning Board may, as part of an open space development, approve buildings with more than three dwelling units, provided that overall tract density does not exceed the maximum permitted by this paragraph.

### **F. OPEN SPACE**

A minimum of 65 percent of the tract's developable land shall be conserved as open space, free of any structures, roads, pavement, or parking areas, and devoted solely to agriculture, forestry, conservation or recreation. A conservation easement deed, incorporating these restrictions, plus any additional use restrictions material to the public benefit evaluation as set forth below, shall be executed from the landowner to the Town of Goshen. The deed shall be reviewed by the Town's attorney at the applicant's expense. So long as the conservation easement to the Town is adequate, no particular legal relationship between the ownership of the open space parcel and the ownership of the developed units, by way of covenants, ownership association, or otherwise, shall be required.

## **G. OPEN SPACE EVALUATION**

The Planning Board shall evaluate the layout of any proposed open space development, in light of the natural features of the tract and its environment, to assure that the designated open space parcel provides a public benefit. The Board shall not approve the layout if there exists a clearly feasible alternative which would yield a significantly improved open space public benefit, yet still meet the applicant's permitted development objectives. A "public benefit" means that the open space:

1. Is larger and more contiguous, rather than smaller and more fragmented;
2. Conserves outstanding or sensitive natural features located on the tract;
3. Is realistically capable of management for economically-viable agriculture or forestry activities;
4. Conserves natural habitat for animals, fish or plants, especially those which are locally rare or unusual;
5. Contributes to the ecological viability of natural systems, or of nearby parks or natural areas;
6. Provides opportunities for public outdoor recreation;
7. Provides scenic enjoyment by the public from the vantage point of public lands, highways, or public waters; or
8. Provides some other open space public benefit explicitly identified by the Planning Board in its decision.

## **H. ALTERATIONS**

No buildings or structures that are not approved as part of the plan shall be constructed, nor any change of use implemented, within an approved open space development without approval of such alteration by the Planning Board. The Board shall evaluate any such alteration, or any

proposed resubdivision of the tract, in the context of the overall tract to assure that the tract as a whole will continue to meet all requirements of this section.

## **SECTION VIII. ENFORCEMENT**

It will be unlawful to erect or relocate any building without first obtaining a building permit from the Building Inspector.

Wherever this ordinance indicates a requirement for a "building" or "zoning" permit, such permit is to be obtained from the Building Inspector, unless otherwise specified. Before granting any such permit, the Building Inspector shall verify that all applicable requirements for the permit have been met.

Upon any well founded information that this ordinance is being violated, the Selectmen shall, on their own initiative, take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other appropriate legal action.

## **SECTION IX. ZONING BOARD OF ADJUSTMENT**

### **A. APPOINTMENT, TERMS, POWERS, DUTIES, PROCEDURES, RULES, AND FEES**

There shall be a Zoning Board of Adjustment (hereinafter may also be referred to as "Board of Adjustment") as provided by New Hampshire law, and its regular and alternate members shall be appointed by the Board of Selectmen and shall have terms and powers conferred upon the Board of Adjustment as set forth in New Hampshire statutes, including but not limited to the hearing and deciding of administrative appeals, requests for variances, or requests for equitable waivers, as set forth in RSA 674:33, RSA 674:33-a, and RSA 676:5 – 676:7. All appeals and applications to the Board of Adjustment shall be in writing on forms prescribed by

that Board. The Board of Adjustment shall, prior to any decision, hold a public hearing with notice as required by law.

The Zoning Board of Adjustment may establish rules to implement the administration of this Ordinance by officials and employees of the Town of Goshen, including but not limited to the establishment of fees for permits or inspections. Prior to the adoption of such rules the Zoning Board of Adjustment shall hold a public hearing in accordance with RSA 675:6 – 675:7. An administrative appeal to a Zoning Board of Adjustment must be taken within 30 days of the administrative action or decision being appealed, provided, however, that the Zoning Board of Adjustment may extend this deadline, if the failure to meet the deadline was due to accident, mistake or misfortune, or the appealing party could not have reasonably known that the administrative decision had been made, and that the appeal was made within a reasonable time in light of such circumstances.

#### **B. SPECIAL EXCEPTIONS**

Certain uses of land and buildings are allowed by this Ordinance only as a special exception by approval of the Board of Adjustment. Before allowing such a special exception, the Board of Adjustment shall first determine that the proposed special exception use will conform to all applicable specific standards contained in this Ordinance, and in addition, must find that the proposed special exception shall have no adverse effect upon:

1. The character of the area in which the proposed use will be located.
2. The highways and sidewalks or use thereof located in the area.
3. Town services and facilities.

If the Board of Adjustment approves an application for a special exception, it shall have the authority to impose appropriate relevant conditions upon the exercise of the special exception as are reasonably related to the above criteria or any other applicable standards contained in this Ordinance. In addition, every special exception granted shall be subject to the condition that the use shall be implemented in substantial conformity with the plans and specifications as presented to the Zoning Board of Adjustment, and that no material change or expansion of the use is permitted in the absence of further action by the Zoning Board of Adjustment.

#### **SECTION X. AMENDMENTS**

This ordinance may be amended by majority vote of any legal town meeting when such amendment is published in the warrant calling for said town meeting and has received the legal public hearings prescribed in Chapter 31, Revised Statutes Annotated and as hereinafter amended.

#### **SECTION XI. PENALTY**

Fines, penalties and other remedies for violations of this Ordinance shall be as provided in state law, including RSA 676:16 through RSA 676:18.

#### **SECTION XII. SAVING CLAUSE: CONFLICT CLAUSE**

The invalidity of any provision of this ordinance shall not affect the validity of any other provision, or of the ordinance as a whole.

Whenever the provisions of this ordinance differ from those prescribed by law, or passed by previous town meetings, the provision which imposes the greater restriction or the higher standard shall govern. This applies to existing building regulations or subdivision codes.

**SECTION XIII. PERSONAL WIRELESS SERVICE FACILITIES ORDINANCE**

This ordinance shall be known and may be cited as the “Town of Goshen Personal Wireless Service Facility Ordinance.” It is hereafter referred to in this section as “this Ordinance.”

**1. PURPOSE**

It is the purpose of this Ordinance to permit the location of personal wireless service facilities (hereafter referred to as PWSF or PWSFs) within the Town of Goshen, while protecting public health, safety, and the general welfare of the community in accordance the Goshen Master Plan. This Ordinance enables the review of PWSFs by the Town of Goshen.

**2. AUTHORITY**

This Ordinance is adopted pursuant to the authority of RSA 674:21.

**3. APPLICABILITY**

The terms of this Ordinance and the site plan review regulations established by the Planning Board pursuant to this Ordinance under the authority of RSA 674:43 shall apply to PWSFs proposed to be located on privately owned property, on property owned by the Town of Goshen, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a PWSF owner.

**4. LOCATION REGULATIONS**

PWSFs shall be permitted throughout Goshen, either on existing structures, buildings, utility towers or poles, or ground-mounted, so long as the provisions of this Ordinance are met.

Any approved PWSF within the Town of Goshen shall reserve space for emergency communications transmission equipment for

Goshen Town Services, including dispatching services, unless waived by the Planning Board.

**5. DIMENSIONAL REQUIREMENTS**

PWSFs shall comply with the following requirements:

**5.1. Height when Using Ground-Mounted Facilities**

Ground-mounted PWSFs in open areas shall not exceed eighty (80) feet above the natural grade of the site. Ground-mounted PWSFs among dense tree growth shall not project higher than twenty (20) feet above the average tree canopy height. This tree buffer shall not be reduced by cutting after the facility has been erected. The Planning Board shall determine which standard applies to a proposed PWSF.

**5.2. Height when Using Existing Structures and Utility Poles**

Owners who locate new PWSFs on structures existing at the time of the adoption of this ordinance (March 11, 2003), such as electric transmission and distribution towers, utility poles, and similar existing utility structures, or mast or monopole towers, may be permitted to increase the height of those structures no more than ten (10) feet. This increase in height shall be permitted only once for each structure.

**5.3. Fall Zone**

In order to ensure public safety, the minimum distance from the base of any ground-mount of a PWSF to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Ordinance. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s).

## **6. PERFORMANCE AND DESIGN STANDARDS**

### **6.1. Mount Type**

Lattice towers and guyed towers are prohibited.

### **6.2. Lighting**

No PWSF in the Town of Goshen shall be lighted, unless required by federal or state regulatory authority.

### **6.3. Camouflage**

PWSFs shall be camouflaged to the satisfaction of the Planning Board, using such methods as compatible building materials and colors, screening, landscaping, placement in the midst of trees and the use of camouflage technology. PWSFs mounted on existing structures shall be so configured as to preserve the character and integrity of those structures. If an antenna is installed on a structure other than a tower, the antenna and supporting equipment shall be visually unobtrusive.

### **6.4. Collocation**

Applicants seeking approval for a new PWSF shall first evaluate existing structures for the siting of the facility. Only after finding that there are no suitable existing structures may an applicant propose a new ground-mounted PWSF. The applicant shall have the burden of proving to the Planning Board's satisfaction that there are no existing structures that are suitable to locate its PWSF.

### **6.5. Security Barrier**

In the interest of public safety, the Planning Board may require that a ground mounted PWSF should be surrounded by a security barrier.

## **7. MAINTENANCE, ABANDONMENT, AND DISCONTINUATION OF USE**

### **7.1. Maintenance**

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

### **7.2. Notification**

At such time that an owner of said PWSF plans to abandon or discontinue operation of said PWSF, such owner will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that an owner fails to give such notice, the PWSF shall be considered abandoned upon discontinuation of operations for a continuous period of ninety (90) days.

### **7.3. Removal**

Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the PWSF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- a. Removal of antennas, tower, mount, equipment shelters, and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- c. Restoring the location of the PWSF to its condition prior to the installation of the PWSF, except that any landscaping and grading shall remain in the after-condition.

#### **7.4. Bonding and Security Requirements**

7.4.1. The applicant shall provide a surety to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the surety. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction. The term of the surety shall be negotiated with and administered by the Planning Board. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

7.4.2. In addition, a reasonable surety shall be maintained to assure payment of maintenance costs or any legal and other professional expenses incurred by the Town resulting from PWSF construction or operations.

#### **7.5. Completion of Removal**

Only when removal of the PWSF is completed to the satisfaction of the Selectboard will the security be returned to the owner.

#### **7.6. Failure to Remove**

If the owner fails to remove the facility in accordance with the provisions of this Section, the Selectboard shall have the authority to issue a declaration of abandonment after holding a public hearing with notice to the owners and abutters. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Selectboard. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

### **8. ADMINISTRATION, ENFORCEMENT AND PENALTIES**

#### **8.1. Site Plan Review**

A PWSF shall require site review and approval by the Planning Board, to assure conformity with all applicable town ordinances and to assure that all applicable state and federal processes have been completed before construction begins, and to comply with any other requirements consistent with regulations adopted by the Planning Board. The Board shall require that the applicant submit all information to which the Town of Goshen is entitled under RSA 12-K, as well as evidence that all provisions of state and federal law respecting such installations have been met and all state and federal reviews completed before construction begins, including but not limited to RSA 12-K, Section 106 of the National Historic Preservation Act of 1966, as amended, the Federal Telecommunications Act of 1996, as amended and the requirements of the Federal Aviation Administration. The Planning Board shall draw up a schedule of procedures which shall ensure that applications are acted upon in a timely fashion. If the Planning Board finds that any application for site plan approval fails to conform with the provisions of this Section, or any other applicable ordinance and/or regulation of the Town, they shall refuse their approval, stating in writing the reasons for their action.

#### **8.2. Enforcement**

It shall be the duty of the Selectboard, and they are hereby given the power and authority, to enforce the provisions of this Ordinance. The Selectboard may appoint an agent to carry out all or any specific duties as the Selectboard might determine. Upon any well-founded information that this ordinance is being violated, the Selectboard shall take immediate steps to enforce the

provisions of this Ordinance by seeking an injunction in the Superior Court or by any other legal action.

### **8.3. Penalties**

Penalties for violation of this Ordinance shall be as set forth in RSA 676:17.

### **8.4. Fees and Expenses**

A reasonable fee shall be paid by the facility owner for each application submitted to the Planning Board seeking approval under this Ordinance. Additionally, the applicant will be required to reimburse the Town for any reasonable expenses incurred by the Planning Board, Selectmen, and their designated officials to evaluate the application before the facility is constructed and to monitor the facility after construction, including but not limited to, expenses incurred to hire qualified engineers to evaluate the structural integrity of a facility. The Planning Board may require that funds to cover the cost of such inspections and other expenses be paid in advance and held in escrow.

### **8.5. Appeals**

In accord with RSA 676:5, III, appeals to decisions of the Planning Board in administering this ordinance shall be made to superior court.

## **9. DEFINITIONS**

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

“ANTENNA” The surface from which wireless radio signals are sent and/or received by a PWSF.

“ANTENNA ARRAY” A collection of antennas attached to a mount to send and receive radio signals.

“AVERAGE TREE CANOPY HEIGHT” The average height found by inventorying the height above ground level of all trees

over 20 feet in height for a radius of 150 feet.

“FACILITY OWNER” The owner of a personal wireless service facility, to be distinguished from the landowner from whom the location of the facility is leased.

“FALL ZONE” The area on the ground from the base of a ground mounted PWSF that forms a circle with a radius equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

“GUYED TOWER” Any tower that is secured to the ground or other surface by diagonal cables for lateral support.

“HEIGHT” The height above ground level from the natural grade of a site to the highest point of a structure.

“LATTICE TOWER” A type of tower with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding or may be guyed.

“MOUNT” The structure or surface upon which antennas are mounted, including mounts on the roofs or sides of buildings, the ground, and structures other than buildings.

“PERSONAL WIRELESS SERVICE FACILITY (PWSF OR PWSFs)” Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. PWSF include a mount, antenna, equipment shelter, and other related equipment.

“PERSONAL WIRELESS SERVICES” The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the

Telecommunications Act of 1996, as amended.

“SECURITY BARRIER” A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

“TOWER” Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The terms include radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

#### **SECTION XIV. FLOODPLAIN DEVELOPMENT ORDINANCE**

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Goshen, NH Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations of the Town of Goshen Zoning Ordinance, and shall be considered part of the Zoning Ordinance for the purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its “Flood Insurance Study for the County of Sullivan, NH” dated May 23, 2006 or as amended, together with the associated Flood Insurance Rate Maps dated May 23, 2006 or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

#### **ITEM I - DEFINITIONS**

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Goshen.

“Area of Special Flood Hazard” is the land in the floodplain within the Town of Goshen subject to a one-percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zone A.

“Base Flood” means the flood having a one-percent possibility of being equaled or exceeded in any given year.

“Basement” means any area of a building having its floor subgrade on all sides.

“Building” – see “Structure”

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

“FEMA” means the Federal Emergency Management Agency.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood elevation study” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

“Flood Insurance Rate Map” (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Goshen.

“Flood Insurance Study” – See “Flood elevation study.”

“Floodplain” or “Flood-prone area” means any land area susceptible to being inundated by water from any source. (See definition of “Flooding”)

“Flood Proofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

“Floodway” – See “Regulatory floodway.”

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure” means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the secretary of the Interior; or
  2. Directly by the Secretary of the Interior in states without approved programs.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes

manufactured homes located in a manufactured home park or subdivision.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Mean Sea Level” means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“New Construction” means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

“100 Year Flood” – see “Base Flood”

“Recreational Vehicle” means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

“Regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

“Special flood hazard area” – See “Area of Special Flood Hazard.”

“Structure” means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

“Start of Construction” includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations for the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the

structure prior to the damage occurring. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

“Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified), of floods of various magnitudes and frequencies in the floodplains.

## **ITEM II - PERMITS**

All proposed development in any special flood hazard areas shall require a permit.

## **ITEM III - CONSTRUCTION REQUIREMENTS**

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites

will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- i. Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- ii. Be constructed with materials resistant to flood damage,
- iii. Be constructed by methods and practices that minimize flood damages,
- iv. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## **ITEM IV - WATER AND SEWER SYSTEMS**

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

## **ITEM V - CERTIFICATION**

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:

- a. The as-built elevation (in relation to NGVD) of the lowest floor (including

basement) and include whether or not such structures contain a basement.

- b. If the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- c. Any certification of floodproofing.

The Building Inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

**ITEM VI - OTHER PERMITS**

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334.

**ITEM VII - WATER COURSES**

- 1. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board or Zoning Board of Adjustment (see Section III.H).
- 2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

- 3. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

**ITEM VIII - SPECIAL FLOOD HAZARD AREAS**

- 1. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).
- 2. The Building Inspector’s 100 year flood elevation determination will be used as criteria for requiring in Zone A that:
  - a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;
  - b. All new construction or substantial improvement of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
    - i. Be floodproofed so that below the 100 year flood elevation the structure is watertight with walls

- substantially impermeable to the passage of water;
- ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
- c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 100 year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- d. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are allowed provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a

registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they allow the automatic entry and exit of floodwater.

- e. Recreational vehicles placed on sites within Zone A shall either: (i) be on the site for fewer than 180 consecutive dates, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (c) (6) of Section 60.3.

#### **ITEM IX - VARIANCES AND APPEALS**

1. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
  - a. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - b. That if the requested variance is for activity within a designated regulatory floodway, no increase in

flood levels during the base flood discharge will result.

- c. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks of life and property. Such notification shall be maintained with a record of all variance actions.
4. The community shall: (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## **SECTION XV. WATER RESOURCES PROTECTION ORDINANCE**

This ordinance shall be known as the Town of Goshen, NH Water Resources Protection Ordinance. The regulations in this ordinance shall overlay and supplement the regulations of the Town of Goshen Zoning Ordinance, and shall be considered part of the Zoning Ordinance for the purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

### **I. AUTHORITY**

The Town of Goshen adopts this ordinance pursuant to the authority granted under RSA

674:16, in particular RSA 674:16, II relative to innovative land use controls.

### **II. PURPOSE**

The purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater.

The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

### **III. DEFINITIONS**

- A. Aquifer: A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- B. Groundwater: Subsurface water that occurs beneath the water table in soils and geologic formations.
- C. Impervious: Not readily permitting the infiltration of water.
- D. Impervious surface: A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.
- E. Junkyard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the director of motor

vehicles under RSA 261:104 and controlled under RSA 236:126.

- F. Outdoor storage: Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- G. Public water system: A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
- H. Regulated substance: Petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-90 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquified fuels which exist as gases at normal atmospheric temperature and pressure.
- I. Sanitary protective radius: The area around a well which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).
- J. Secondary containment: A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.
- K. Snow dump: For the purposes of this ordinance, a location where snow which is cleared from roadways and/or motor vehicle parking areas is placed for disposal.
- L. Stratified-drift aquifer: A geologic formation of predominantly well-sorted

sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

- M. Surface water: Streams, lakes, ponds and tidal waters, including marshes, water courses and other bodies of water, natural or artificial.
- N. Wellhead protection area: The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

#### **IV. WATER RESOURCES PROTECTION DISTRICT**

The Water Resources Protection District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries the following:

- A. The wellhead protection areas shown on the map entitled Drinking Water Resources and Potential Contamination Sources for the Town of Goshen, prepared by the New Hampshire Department of Environmental Services, dated December 18, 2000.
- B. The stratified drift aquifers shown on the map entitled Stratified Drift Aquifers, Town of Goshen, prepared by the Upper Valley Lake Sunapee Regional Planning Commission, dated 1998.

#### **V. APPLICABILITY**

This Ordinance applies to all uses in the Water Resources Protection District, except for those uses exempt under Article XI of this Ordinance.

## **VI. PERFORMANCE STANDARDS**

The following Performance Standards apply to all uses in the Water Resources Protection District unless exempt under Article XI:

- A. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996 and any subsequent revisions;
- B. Stormwater management plans prepared pursuant to paragraph A shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Wm 1403.05) at the property boundary;
- C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 1998, and any subsequent revisions;
- D. All regulated substances stored in containers with a capacity of 5 gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- E. Facilities where regulated substances are stored must be secured against unauthorized entry by means (a) of door(s) and/or gate(s) which is (are)

locked when authorized personnel are not present and must be inspected weekly by the facility owner;

- F. Outdoor storage areas for regulated substances must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
- G. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of 275 gallons or more of regulated substances are stored outdoors on any particular property;
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.

## **VII. PERMITTED USES**

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Water Resources Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under Article XI.

## **VIII. PROHIBITED USES**

The following uses are prohibited in the Water Resources Protection District.

- A. The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A;
- B. The siting or operation of a solid waste landfill;
- C. The outdoor storage of road salt or other deicing chemicals in bulk;
- D. The siting or operation of a junkyard;



- I. Underground storage tank systems and above-ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XIII of this ordinance.

## **XII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS**

Where both the State and the municipality have existing requirements the more stringent shall govern.

## **XIII. MAINTENANCE AND INSPECTION**

- A. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards, shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Sullivan County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by an agent designated by the Goshen Selectmen at reasonable times with prior notice to the landowner.
- C. All properties within the Water Resources Protection District known to the agent designated by the Goshen Selectmen as using or storing regulated substances in containers with a capacity of 5 gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article XI, shall be subject to inspections under this Article.
- D. The Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the

Selectmen as provided for in RSA 41-9:a.

## **XIV. ENFORCEMENT PROCEDURES AND PENALTIES**

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

## **XV. SAVING CLAUSE**

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

## **SECTION XVI. BUILDING ORDINANCE**

### **1. APPOINTMENT AND DUTIES OF BUILDING INSPECTOR**

The building ordinance of the Town of Goshen, New Hampshire was adopted by the voters of Goshen in 1968 and was amended by the voters of Goshen in 1989, 2002, and 2003.

The Inspector of Buildings shall be appointed by the Selectmen annually and shall be the administrative officer of this ordinance. He shall receive applications for all new buildings and the fees as provided in this ordinance; shall deposit with the Town Clerk a record of all applications and his action thereon; and may issue permits for erection if, in his opinion, the proposal complies with the law of the State, this ordinance and other town ordinances and by-laws; shall act in coordination with the fire warden and/or health officer in any matter in which their duties as prescribed by law may coincide or conflict; and shall take such action in the enforcement of this ordinance as may be directed by the Selectmen.

### **2. REQUIREMENT OF PERMITS FOR ALL BUILDINGS**

No building shall be erected until a permit thereof has been issued under the terms of this ordinance. Remodeling into habitable dwellings of existent structures not now being so used or conversion into apartment units of existent homes, attached ells and/or accessory buildings shall place them within the scope of this ordinance. Any additions to existing buildings for the creation of living space shall also require a permit.

### **3. BUILDING PERMIT AND FEES**

No application for a permit required by this ordinance shall receive action by the Building Inspector unless made in writing.

All applications for a permit to build or reconstruct such a class of building shall be accompanied by a sketch or plan of the proposed building including a wiring diagram. The description and plan of the project shall contain detail that is sufficient to enable the Building Inspector to assess its compliance with all provisions of the Town's Building Ordinance as well as current state and federal regulations. A building permit shall become void unless operations are commenced within six (6) months from date of approval, unless such time is extended by the Building Inspector in writing.

#### **3.a. Occupancy Permit**

No building may be occupied permanently until a certificate of occupancy has been issued by the Building Inspector.

#### **3.b. Fees**

Fees for building permits and for certificates of occupancy shall be set by the Board of Selectmen under the provisions of RSA 41:9-a, at amounts reasonably calculated to cover the Town's actual regulatory, administrative, and enforcement costs in connection with this Ordinance. Prior to setting any such fees, the Selectmen shall hold a public hearing as set forth in RSA 41:9-a, IV.

If a building permit is denied, all but \$5 of the fee will be refunded.

### **4. ACTION ON BUILDING PERMITS**

Upon receiving such application the Building Inspector shall promptly take such action as may be indicated in the way of investigation to acquaint himself with the merits of the application. If he finds the proposed building to conform with the law and this ordinance, including the State Fire and State Building Code, he may at once issue the permit in writing over his signature. If he finds the proposal in any

conflict with the law or this ordinance, he shall fix whatever restrictions or conditions on the proposed construction as may be, in his best judgment, right and proper, or for reasonable cause he may refuse the permit. As set forth in RSA 155-A:2, VIII, responsibility for compliance with the State Building Code, State Fire Code, this Ordinance, or any other applicable law shall remain the full responsibility of the land owner and contractor. Neither the issuance of a permit nor any inspection shall be construed as a representation or guarantee of code compliance.

## **5. CONSTRUCTION REQUIREMENTS**

No building or structure shall be erected or rebuilt for habitation unless in compliance with the following:

### **5.a. Roofs**

No roof of any building shall be covered or recovered in whole or in part save with any non-combustible or fire-resistant roofing materials.

### **5.b. Chimney Construction**

Chimneys shall extend at least 3 feet above the highest point where they pass through the roof of a building and at least 2 feet higher than any portion of the building within 10 feet. No chimney shall be built having wood or other combustible materials within one inch of the chimney and no chimney shall have its base resting upon any floor or beam of combustible material. Factory-built chimneys that are approved as a result of tests and listing by a nationally recognized testing laboratory shall be installed in accordance with the conditions of the approval.

### **5.c. Thimbles**

No wallpaper or other combustible material shall be laid over any thimble or thimble hole in any chimney.

### **5.d. Smoke Pipes**

No smoke pipes shall be installed or erected so as to be within twelve inches of any combustible floor or ceiling, unless amply protected with non-combustible material. No smoke pipe shall be installed or erected which passes into or through partitions or walls of combustible material except when guarded by a double collar of metal with air space of at least five inches, or by at least five inches of brick or other non-combustible material between the pipe and the combustible material.

### **5.e. Electric Wiring**

All electrical wiring shall conform with approved methods and practices for safety to life and property. Compliance with the current version of the National Electrical Code, published by the National Board of Underwriters, as may be amended from time to time, shall be prima facie evidence of such approved methods and practices.

### **5.f. Plumbing**

All plumbing shall conform with approved methods and practices for safety to life and property. Compliance with the current version of the International Plumbing Code as published by the International Code Council, as may be amended from time to time, shall be prima facie evidence of such approved methods and practices.

### **5.g. Foundations**

All structures shall be set on solid foundations or piers of cement, brick, stone, or other acceptable masonry.

### **5.h. Living Space**

Every dwelling unit to be used by a single family shall have a minimum living space of 800 square feet. Smaller dwelling units may be permitted by special exception, with a limit placed by the Zoning Board of Adjustment on the number of occupants allowed in each unit.

### **5.i. Outside Walls**

Outside walls shall be constructed of properly finished material commonly used for outside construction. Protective building paper is not acceptable within the scope of this paragraph.

### **5.j. Sewerage**

When a public system is not available, a private sewerage disposal system is required. Septic tanks and drainage fields are required with flush bowls and size, type, and construction must be approved. All septic tanks and drainage fields shall be in accordance with state law (Chapters 147-8, Revised Statutes Annotated).

### **5.k. Setback**

All buildings shall have setbacks that conform to setback requirements defined in Sections III.D.1 and III.D.2 (general), Section IV.2 (slaughtering and commercial raising of animals or poultry), Sections V.B.1 and V.B.2 (commercial) or Sections VI.B, VI.C, and VI.D (non-conforming), as applicable.

### **5.l. Culverts**

In any case where a new driveway or roadway could interfere with drainage on town roads, culvert installation and necessary grading may be required of property owner concerned.

## **6. MOBILE HOMES**

Mobile homes shall come within the scope of these regulations in all respects except the living space area, where the provisions of RSA 674:31 shall apply. Travel units or recreational vehicles shall not be set up on a permanent basis for habitation without conforming with these regulations. School buses and similar vehicles are not approved for habitation.

## **7. RIGHT OF APPEAL**

Any order, requirement, decision, or determination made by an administrative official may be appealed before the Zoning Board of Adjustment, sitting as the Building Ordinance Board of Appeals.

## **8. AMENDMENT**

This ordinance may be amended by a majority vote of any legal town meeting when such amendment is published in the warrant calling for the meeting.

## **9. ENFORCEMENT**

Upon any well-founded information that this ordinance is being violated, the Selectmen shall on their own initiative take immediate steps to enforce the provisions of the ordinance by seeking an injunction in the Superior Court or by other appropriate legal action. Whoever violates any of the provisions of the above regulations shall be punished upon conviction by fines and penalties consistent with RSA 676:15; 676:17; 676:17-a and 676:17-b.

## **10. CONFLICTING PROVISIONS**

Whenever the regulations made under the authority hereof differ from those described by any statute, ordinance, or other regulations, that provision which imposes the greater restriction or the higher standard shall govern.

## **11. VALIDITY**

If any section, clause, provision, portion, or phrase of this ordinance shall be held invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair, or invalidate any other section, clause, provisions, portion, or phrase of this ordinance.