

**TOWN OF EPSOM, NEW HAMPSHIRE**

**ZONING ORDINANCE**

**Revised – April 2022**

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**TOWN OF EPSOM  
ZONING ORDINANCE**

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**ARTICLE I****A. Preamble.**

In order to retain the beauty and rural atmosphere of the Town of Epsom, New Hampshire, to protect property values, to conserve natural resources, to encourage the most appropriate use of land throughout the municipality and to promote health, safety, morals, order, convenience, peace, prosperity, and general welfare of its inhabitants, the following Ordinance is hereby enacted by the said Town, pursuant to the authority conferred by New Hampshire Revised Statutes, Annotated, 1955, Chapter 31, Sections 60 through 89 and as amended.

**B. Applicability. This Ordinance shall apply to:**

1. All buildings or structures erected, reconstructed, altered, enlarged, or relocated after the effective date of this Ordinance,
2. The use of any building, structure, or land which is substantially different from its use prior to the effective date of this Ordinance, and
3. Any land which is subdivided after the effective date of this Ordinance. RSA 674:19.

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## ARTICLE II ZONES AND DISTRICTS

### A. Zones.

1. The Town of Epsom shall be divided into three (3) zones for the purposes of these Ordinances:
  - a. Residential/Agricultural Zone (R/A)
  - b. Residential/Commercial Zone (R/C)
  - c. Residential/Light Commercial Zone (RLC)
2. All lots shall contain a minimum of two (2) acres with two hundred (200) feet of frontage on a Class V, or higher class, road. In case of an arc, the frontage shall be measured as the chord of the arc. These Ordinances specifically designate the uses or activities permitted in each zone. All buildings or structures, in all zones, shall be set back no less than fifty (50) feet from “wetlands” as defined by the New Hampshire Department of Environmental Services.
3. All newly created businesses or expanding existing businesses; to include those approved through a special exception or a variance; shall be required to obtain a Site Plan review approval from the Planning Board.
4. Lots which are split by zoning use boundary lines shall be considered as keeping distinct zoning identities for that portion of the lot in each zone. Variances shall be necessary to extend uses across zoning use boundary lines that would not otherwise be allowed.

### B. Purpose and Location of Zones & Districts.

#### 1. Residential/Commercial Zone.

##### a. Purpose.

The purpose of this Zone is to contain residential as well as commercial establishment as permitted by, and subject to conditions imposed under, these Ordinances and the table of uses.

##### b. Location. This Zone shall include:

- i. Route 4 west of the Epsom Traffic Circle, Route 4 east of Center Hill Road and Route 28 south of the Epsom Traffic Circle to a line perpendicular to Route 28 at the southern boundary of tax map and lot U-11-25. The Zone shall be on both sides of the roads enumerated; excluding the southerly side of Route 4, from Cass Road to NH Route 107, which is consistent with Article II, Section B.3.b, shall be in the Residential Agricultural Zone, and will have a depth of five hundred (500) feet from the edge of the public right of way.

- ii. The area bound as follows: beginning at the point of the junction of Route 28 (north of Circle) and Chichester Town line; and running along the Chichester Town line to its point of junction with U.S. Route 4; thence running east along Route 4 to the Epsom Traffic Circle; then turning and running north along Route 28 to the point of beginning. The Zone shall be enumerated and will have a depth of five hundred (500) feet from the edge of the public right of way of the Easterly sideline of Route 28.
- iii. The area bound as follows: beginning at a point at the northerly junction of Route 28 and Elkins Road, thence running in a line parallel to that of Route 4, to the point of intercepting the Chichester town line; thence turning northerly along the Chichester line to the point of intersecting Route 4; thence turning and running along Route 4 to the Epsom Traffic Circle; thence turning southwesterly and running along Route 28 to the point of beginning.
- c. Areas which are within the One Hundred Year Flood Plain shall be exempt from inclusion in the Zone. No refuse shall be stored on a permanent basis outside of commercial structures. Inventory may be stored outside if it is orderly, is not noxious, and is consistent with the surrounding landscape. Trailers and other temporary external structures intended for the storage of refuse and inventory beyond what is normal and customary are prohibited. (See Table of Uses on Page 6 for permitted uses.)

## 2. Residential/Light Commercial Zone.

### a. Purpose.

This Zone is intended to foster light commercial uses that are compatible with the residential use and will promote the preservation of the historic structures; and to instill the atmosphere of the business center of the Town.

### b. Location.

This Zone shall contain the area on both sides of Route 4 to a depth of five hundred (500) feet from the edge of the public roadway, beginning at the intersection of the Suncook River and Route 4 running easterly to a line drawn perpendicular to Route 4 across the same road from the western point of its intersection with Center Hill Road. Also, the area along Route 28 South of the boundary of the Residential/Commercial Zone to the Pembroke town line. This Zone shall include the area to a distance of five hundred (500) feet from the edge of Route 28 to the west and the westerly shore of the Suncook River to the east.

### c. Uses.

Subject to restrictions and requirements enumerated within these Ordinances the following uses shall be permitted in this Zone:

- i. Single and multiple family residential dwelling.

- ii. No more than one (1) five thousand (5,000) gross square feet commercial building on each lot to include, but not limited to retail shops, antique shops, gift shops, flower shops and other business selling merchandise directly to the consumers and professional offices including medical, dental, chiropractic, physical therapy, real estate, insurance, legal services and counseling.
- iii. Other uses permitted by these Ordinances, subject to conditions and restrictions imposed therein.
- d. Areas which are within the One Hundred Year Flood Plain shall be exempt from inclusion in the Zone. No refuse shall be stored on a permanent basis outside of commercial structures. Inventory may be stored outside if it is orderly, is not noxious, and is consistent with the surrounding landscape. Trailers and other temporary external structures intended for the storage of refuse and inventory beyond what is normal and customary are prohibited. (See Table of Uses on Page 6 for permitted uses.)

### 3. Residential/Agricultural Zone.

#### a. Purpose.

This Zone is intended primarily for residential and agricultural use, while preserving the rural atmosphere of the community.

#### b. Location.

The Residential/Agricultural Zone shall consist of all land not within the Residential/Commercial Zones or Residential/Light Commercial Zones.

#### c. Uses.

Subject to the restrictions and requirements enumerated in these Ordinances, the following uses shall be permitted in this Zone:

- i. Single and multiple family residential dwellings.
- ii. Agricultural uses as defined in the Glossary of Terms of these Ordinances.

### 4. Groundwater Protection District Purpose and Boundaries.

#### a. Purpose.

The purpose of this ordinance is, in the interest of the 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 stratified drift aquifers identified as being needed for present and/or future public water supply.

b. Groundwater Protection District.

i. District Boundaries.

The Groundwater Protection District shall be an overlay district as depicted on a map entitled Epsom Groundwater Protection District as prepared by Central New Hampshire Regional Planning Commission (CNHRPC) and dated March 8, 2021 and filed at the Epsom Town Clerk's Office. See also Appendix C.

ii. Disputed Boundaries. When the actual boundary of the Groundwater Protection District is in dispute by any landowner or abutter affected by said boundary, the Planning Board, at the landowner/abutter's expense and request, may engage the services of a professional geologist, hydrologist or hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. Geology testing required by the Planning Board for review of boundary disputes shall be conducted at the owner/abutter's expense in accordance with a scope of work determined by a consultant hired by the Town, but paid for by the owner/abutter. This report shall include but not be limited to the following:

- a. A two-foot interval topographic layout prepared by a registered land surveyor of the subdivision and/or area to be developed;
- b. A site-specific soils map of the subdivision and/or area to be developed prepared by a soils scientist qualified in hydrologic studies including a written report of his/her on-site field inspection and test boring data;
- c. The Groundwater Protection District boundary shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line;
- d. Evidence derived from a pumping test(s) or a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of aquifer or recharge area; and
- e. When the area in question is the Wellhead Protection Area, evidence shall also comply with guidelines published by NHDES for Phase II delineations of public water systems in order to determine the contribution zone of any portion of a municipal water supply that lies beneath the subject parcel.

iii. Additional mapping, hydrogeologic reports or information which becomes available as a result of recent or on-going scientific investigations of the locations and extent of aquifers performed by the U.S. Geological Survey, New Hampshire State agencies or boards, the Town of Epsom or agents of any of the above. The Planning Board, under the advisement of the Conservation Commission, shall have the authority to adjust the boundary or area designation of the Groundwater Resource Conservation District based upon any findings or reports submitted under this section.

## C. Table of Uses

Residential/Agricultural, for Residential/Commercial and for Residential/Light Commercial Zones.

|      | LIST OF PRINCIPAL USES  | ZONE:      |            |            |
|------|---|------------|------------|------------|
|      |   | <u>R/A</u> | <u>R/C</u> | <u>RLC</u> |
|      | <b>Retail and Service Uses</b>  |            |            |            |
| 1.   | Retail establishment selling principally convenience goods including, but not limited to food, drugs, and proprietary goods.  | S          | P          | P/P        |
| 2.   | Retail establishment selling and/or renting general merchandise, including, but not limited to, dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares, and hardware, and including discount and limited price variety stores. | N          | P          | P/P        |
| 2.a. | Cannabis Dispensary   | N          | S          | N          |
| 2.b. | Sexually Oriented Businesses.   | N          | S          | N          |
| 3.   | Eating and drinking places not including drive-in establishments.   | N          | S          | S          |
| 4.   | Drive-in eating establishments.   | N          | S          | S          |
| 5.   | Establishments selling and /or renting new or used motorized vehicles or heavy equipment meeting state inspection standards, where applicable, to include automobiles, recreational vehicles, motorcycles, boats, snowmobiles, and accessories thereto.                 | N          | S          | N          |
| 6.   | Personal and consumer service establishment.  | N          | P          | P          |
| 7.   | Funeral establishment.  | N          | P          | P          |
| 8.   | Membership club.  | S          | S          | S          |
| 9.   | Professional and business offices and services.   | S          | P          | P          |
| 10.  | Automotive and heavy equipment repair, automotive and heavy equipment service station or garage (not including a junkyard or open storage of abandoned or other vehicles).  | N          | S          | N          |
| 11.  | Miscellaneous business repair service.  | N          | S          | S          |
| 12.  | Motion picture establishment, indoor.   | N          | S          | S          |

|        |  |     |     |     |
|--------|--|-----|-----|-----|
| 13.    | Other amusement or recreation service outdoor, including camping grounds.  | S   | S   | S   |
| 13.a.  | Sports Facility – Indoor and Outdoor   | N   | S   | N   |
| 13.b.  | Bed and Breakfasts.  | P** | P   | P   |
| 13.c.  | Hotels, Motels, Inns, Resorts.   | S   | P   | P   |
| 14.    | Communications and television towers.  | P/P | P/P | P/P |
| 15.    | Planned business development.  | N   | SU  | SU  |
| 16.    | Construction of drainage facilities other than essential services or damming up or relocating any watercourse, waterbody, or wetlands. | N   | S   | N   |
| 17(a). | Single Family Residence (one unit).  | P   | P   | P   |
| 17(b). | Single Family Accessory Dwelling.  | S   | S   | S   |
| 18.    | Two Family Residence (two units).  | P   | P   | P   |
| 19(a). | Multi-Family Residence (three units or more).  | S   | S   | S   |
| 19(b). | Elderly Multi-Family Apartment Residences (three or more dwelling units).  | S   | S   | S   |
| 20.    | Conversion of existing structures to Multi-Family uses (three units or more).  | S   | S   | S   |
| 21.    | Cluster Residential Developments.  | SU  | SU  | SU  |



|     | <b>Wholesale, Transportation,<br/>and Industrial Uses</b>  | <b><u>R/A</u></b> | <b><u>R/C</u></b> | <b><u>RLC</u></b> |
|-----|--|-------------------|-------------------|-------------------|
| 22. | Self-Storage Facility.   | N                 | S                 | N                 |
| 23. | Removal of sand, gravel, loam, quarry, or other raw material.  | S                 | S                 | S                 |
| 24. | Processing, treating, and storage of raw materials including operations appurtenant to the taking; such as grading, drying, sorting, crushing, grinding, and milling operations. | N                 | S                 | N                 |
| 25. | Retail sale of gardening, landscaping and horticultural supplies directly to the consumer of the products.   | N                 | P                 | P                 |
| 26. | Construction industry including suppliers.   | N                 | S                 | N                 |
| 27. | Manufacturing.   | N                 | S                 | N                 |
| 28. | Laundry or dry-cleaning plant.   | N                 | S                 | N                 |
| 29. | Motor freight terminal and warehousing.  | N                 | N                 | N                 |
| 30. | Bus passenger terminal.  | N                 | S                 | S                 |
| 31. | Wholesale, trade, and distribution.  | N                 | S                 | N                 |
| 32. | Open storage of finished goods, or construction equipment and structure for storing such equipment.  | N                 | S                 | N                 |
| 33. | Research offices or establishments devoted to research and development activities:   |                   |                   |                   |
|     | a. Principal use.  | N                 | S                 | S                 |
|     | b. Accessory use.  | N                 | S                 | S                 |
| 34. | Junkyards.   | SU                | SU                | N                 |

|     | Accessory Uses                       | ZONE: |     |      |
|-----|--------------------------------------|-------|-----|------|
|     |                                      | R/A   | R/C | R/LC |
| 35. | Home Occupation.                     | P     | P   | P    |
| 36. | Day Care.                            | S*    | P   | P    |
| 37. | Elementary, Middle and High Schools. | S     | S   | S    |
| 38. | Churches.                            | S     | P   | P    |
| 39. | Kennels & Boarding Facilities.       | P     | P   | P    |
| 40. | Brewery                              | N     | S   | N    |

\*Special Exception required for Day Care that provides services for ten (10) or more children.

\*\*Special Exception required for Bed & Breakfasts with more than four rental bedrooms, with or without shared lavatory facilities, in the Residential/Agricultural Zone.

**KEY:**

- N = None Allowed
- P = Permitted
- S = Permitted w/Special Exception
- P/P = Partially Permitted Subject to Restrictions
- SU = Special Usage Permit

**D. Motorized vehicles sale facilities.**

1. In addition to other restrictions imposed in these Ordinances no “motorized vehicle sale establishment or facility” as defined herein may be permitted within one thousand (1000) feet of another such facility or establishment.
2. “Motorized vehicle sale establishment or facility” shall mean any enterprise engaged in the sale of new or used motorized vehicles, to include heavy equipment, automobiles, truck, motorcycles, boats, recreational vehicles, snowmobiles and accessories, where such vehicles conform to state inspection requirement, if any.

**E. Manufactured Housing.**

In addition to other regulations and requirements applicable under these Ordinances, no manufactured housing unit or mobile home may be placed in, constructed on, or attached to, any land located in Epsom unless the said unit was originally manufactured within ten (10) years immediately preceding the completion of the placement of the unit upon any such land. The date of the manufacture shall be the date indicated on the certificate of origin or certificate of title issued by the manufacturer.

This Section, however, shall not prohibit or prohibit the removal and reinstallation of manufactured housing units over ten (10) years old from a site within Epsom or another site within Epsom; so long as the unit was put to a permitted and authorized use at its former location; and will not be put to the same use which is permitted and authorized at its new location.

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## F. Groundwater Protection District – Authority, Applicability, Uses, etc.

### 1. Authority.

The Town of Epsom hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

### 2. Applicability.

The ordinance applies to all new or expanded uses in the Groundwater Protection District, except for those uses exempt under Section 5 (Exemptions) of this Chapter.

### 3. Existing Non-Conforming Uses.

Existing Non-Conforming Uses may continue without expanding or changing to another non-conforming use.

### 4. Permitted Uses.

All uses permitted by right or allowed by special exceptions in the underlying district are permitted in Groundwater Protection District unless they are Prohibited Uses or Conditional Uses.

### 5. Exempted Uses.

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements.

- a. Any private residence is exempt;
- b. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons;
- c. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection and secondary containment in place;
- d. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle;
- e. Temporary storage of construction materials on a site where they are to be used within the site development project within six months of their deposit on site;
- f. The sale, transportation, and use of pesticides;
- g. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03 (b)(1) and 501.01(b);

- h. Underground storage tank systems and aboveground systems that are in compliance with applicable state rules.

## 6. Prohibited Uses.

The following uses are prohibited in the groundwater Protection District:

- a. The development or operation of hazardous water disposal facility as defined under RSA 147-A;
- b. The development or operation of a solid waste landfill;
- c. The outdoor storage of road salt or other deicing chemicals in bulk;
- d. The development or operation of a junkyard;
- e. The development or operation of a snow dump;
- f. Biosolids processing/disposal/mixing;
- g. The development or operation of a petroleum bulk plant or terminal;
- h. Floor drains without oil and water separation.

In the event a prohibited use is granted a variance from the Epsom Zoning Board of Adjustment, a Conditional Use Permit must be obtained from the Planning Board in accordance with the provisions of this Article.

## 7. Conditional Uses.

The Planning Board may grant a conditional use permit for a use which is otherwise permitted within the underlying district, if the permitted use is involved in one or more of the following:

- a. The development or operation of gas stations.
- b. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time.
- c. Any use that will render impervious more than 15% or 2,500 SQ feet of any lot, whichever is greater.
- d. Any activities that involve blasting of bedrock.
- e. Any use listed as prohibited in this Article that receives a variance from the Epsom Zoning Board of Adjustment.

## 8. Conditional Use Permit Requirements.

In accordance with RSA 674:21, Innovative Land Use Controls, the Planning Board is authorized to issue Conditional Use Permits (CUP) for Conditional Uses within the Aquifer Protection Overlay District in the following manner:

- a. A completed application shall consist of the following:
  - i. A completed Conditional Use Permit application.
  - ii. Fees as defined by the Board of Selectmen and as described on the Conditional Use Permit application described herein.
  - iii. A project narrative describing the proposal and providing evidence demonstrating compliance with all of the required Conditional Use Permit Elements as described below.
  - iv. Plans project narrative describing the proposal and providing evidence demonstrating compliance with all of the required Conditional Use Permit Elements as described below.
  - v. Any other elements or studies that may be requested by the Planning Board.
- b. Application Process:
  - i. Applications may be processed individually or with a concurrent Site Plan, Subdivision, or Excavation Application, as applicable.
  - ii. A Conditional Use Permit shall be considered at a public hearing of the Planning Board following due notice of such hearing and following a determination by the Board that the application is complete. The board shall follow the application process as prescribed in the Epsom Site Plan Regulations.
  - iii. A Conditional Use Permit shall be issued by the Planning Board only if all of the following Conditional Use Permit Elements, in the opinion of the Board, have been demonstrated to be true:
    - a. That the proposed use complies with the use and dimensional requirements of the underlying zone;
    - b. That a Spill Prevention, Control, and Countermeasure Plan (SPCC) has been approved by the Fire Chief who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods, or fires that may cause large releases of regulated substances. The Town may consult third party entities at the expense of the applicant to ensure compliance;
    - c. That the potential contaminant(s) are as far from open water, wetlands, and stormwater elements as possible;

- d. That stormwater management elements comply with current NHDES/NHDOT design requirements;
- e. That temporary erosion control measures are shown on the plan, that their maintenance is clearly described, and that they comply with current NHDES/NHDOT design requirements;
- f. That regulated substances are stored in double-walled, contained containers and comply with current NHDES/NHDOT design requirements;
- g. That all other regulated substances are stored sealed containers with secondary containment;
- h. That ALL regulated substances are secured;
- i. That ALL regulated substances will be visually monitored on a regular basis;
- j. That all transfer locations for regulated substances are clearly indicated on the plans in a lighted area over an impervious surface; and,
- k. No regulated substance will be exposed to rainwater or other elements that may result in washing them into open water, wetlands, and stormwater elements.

#### 9. Relationship Between State and Local Requirements.

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

#### 10. Enforcement Procedures/Penalties.

Any violation of the requirements of this ordinance shall be subject to enforcement penalties detailed in RSA 485-C:16 and RSA 676:17 and RSA 676:17-a.

#### 11. Saving Clause.

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

#### 12. Effective Date.

This ordinance shall be effective upon adoption by the legislative body.

#### 13. Definitions:

The following defined terms shall apply to the administration of this Article:

- a. Aquifer: A geologic formation composed of sand or gravel that contains significant amounts of potentially recoverable water.

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- b. Buk Plant or Terminal, Petroleum: That portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
  - c. Groundwater: Subsurface water that occurs beneath the water table in soils and geologic formations:
  - d. Gas Station: That portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.
  - e. Impervious Surface: A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. 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.
  - f. 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. 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.
  - g. Outdoor: Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
  - h. Public Water Supply/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, under RSA 485:1-a.
  - i. Regulated Substance: Petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 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 liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
  - j. Secondary Containment: A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
  - k. Sow 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 sand and/or gravel, which contains sufficient saturated permeable material to yield useable quantities of water to wells.

- m. **Surface Water:** Streams, lakes, and ponds, including marshes, wetlands, water-courses, second order streams or higher, and other bodies of water, natural or artificial.
  
- n. **Wellhead Protection Area:** The surface and subsurface area surrounding a water-supply well or wellfield that supplies a community public water system, through which groundwater and contaminants could potentially migrate to reach the water well or wellfield.



### ARTICLE III GENERAL PROVISIONS

#### A. Air and Water Pollution.

No land use will be permitted which violates existing state and federal water and air pollution regulations.

#### B. Pre-Existing, Non-Conforming Uses.

##### 1. General.

The Epsom Zoning Ordinances generally are applicable to and regulate the creation, subdivision, alternation of parcels located in Epsom, and the use to which any lands may be put.

##### 2. Pre-Existing Lots.

All lots or parcels of land which existed prior to enactment of these Ordinances in September 1969 may continue to exist and be subject to ownership and conveyance as distinct lots. Any lot or lots subdivided after September 15, 1969 may continue to exist and be subject to ownership and conveyance as distinct lots, provided, however, that any such lot was approved by the Planning Board, and

- a. conformed to the lot size and frontage requirement in effect at the time of such approval, or
- b. a special exception or variance, whichever appropriate, was obtained from the Epsom Zoning Board of Adjustment.

##### 3. Pre-Existing Uses.

- a. A pre-existing use shall mean a specific and distinct use which:
  - i. was commenced, initiated, or constructed legally and in conformity with all local and state laws in effect at the time of commencement, and
  - ii. has continued since its lawful inception, and
  - iii. has not been substantially changed or enlarged since the lawful commencement of the use;
- b. All such pre-existing non-conforming uses shall be permitted to be continued indefinitely and be exempt from the restrictions imposed by these Ordinances subsequent to their commencement, unless:
  - i. the specific use has ceased for any one-year (1) period, or

- ii. the specific use has substantially changed or enlarged, or
- iii. the specific use is of such nature, which constitutes a hazard to public health and safety, or has become a nuisance.

At which time, all restrictions of these Ordinances shall become applicable and the pre-existing use must conform to all applicable provisions of these Ordinances to include frontage, acreage, setback; side, front and rear yard; height and density.

#### 4. Change and Expansion of Use.

As delineated in subsection 3 above; subject to the following provisions, a pre-existing, non-conforming use may not substantially change nor enlarge. In determining whether any change or proposed change constitutes “substantial” to be prohibited under these Ordinances the determining authority shall consider factors including but not limited to:

- a. The nature of the use, whether residential, commercial, industrial, or otherwise.
- b. The actual size of any enlargement in relation to the original pre-existing use.
- c. The impact of the enlargement or change on the surrounding neighborhood, roads, municipal resources, and the environment.
- d. Whether the enlargement or change is violative of any provision of these Ordinances in effect at the time and if so the actual number and the substance of each provision which may be violated.

#### 5. Continued Use.

- a. Repairs and maintenance which merely preserve but not enlarge or change a pre-existing, non-conforming use shall be permitted and shall not constitute a substantial change or enlargement.
- b. A pre-existing, non-conforming use as defined by these Ordinances may be enlarged by no more than twenty-five percent (25%) in proportion to the originally protected and vested pre-existing, non-conforming use. Such enlargement in area usage shall not constitute substantial enlargement or change unless such enlargement would be violative of further protective Ordinances.
  - i. Example: If a residential dwelling was containing one thousand (1,000) square feet of living space constructed on a substandard lot before September 15, 1969 and has been in continued use, then the dwelling may be enlarged by an addition of two hundred fifty (250) square feet of living space, unless such enlargement would be violative of an independent restriction such as the side-yard or height requirements.

c. Acts of God.

If any pre-existing, non-conforming use is terminated by an act of God such as fire or flood, such terminated use may be rebuilt or restored substantially to its original nature so long as such restoration or reconstruction is completed within one (1) year of the termination or destruction. The said term may be extended to two (2) years upon a showing of necessity and hardship including financial hardship. The extension may be granted by the Zoning Compliance Officer whose decision is subject to administrative appeal to the Zoning Board of Adjustment.

d. Mobile Home.

Removal of a mobile home when done with the intent of replacing the same shall not constitute a cessation or termination of the pre-existing use so long as a replacement unit substantially similar to the pre-existing unit is installed within one (1) year of the removal of the original unit, provided further that the replacement unit does not further violate the Ordinances than the original pre-existing unit.

- i. Example: If a mobile home is removed from a lot lacking the frontage requirement, another mobile home substantially similar in size to the pre-existing unit may be placed on the same site within one (1) year without the need for a variance. The new unit, however, may not violate other Ordinances such as the setback requirement to any extent greater than the original pre-existing unit.

6. Relief.

- a. Unless specifically provided otherwise in this Section, any use or proposed use which may be inconsistent with or violate any provision of these Ordinances shall require a variance from the Epsom Zoning Board of Adjustment under the procedure and standards described in Article VI.E.
- b. Under the following circumstances the use or proposed use shall be subject to a special exception from the specific restriction enumerated and not a variance:
  - i. all uses so designated by an "S" in the list of principal uses within these Ordinances.
  - ii. as expressly permitted under Article III, Section M.6, Paragraph 2, relative to signs and signage.
  - iii. from the applicable minimum acreage requirement where the pre-existing parcel of land and the proposed use meet all other requirements; and the parcel contains no less than one-half (1/2) of the acreage required at the time of the proposed use. This Section shall expire without any further action on March 15, 2008. All such proposed uses not completed before that date shall then require a variance, regardless of whether or when a permit has issued.

iv. from the applicable minimum frontage requirement, where the pre-existing parcel of land and the proposed use meet all other requirements, and the frontage is no less than one-half (1/2) of the linear length which is required under these Ordinances at the time of the proposed use. This Section shall expire on March 15, 2008. All proposed uses not completed before that date shall then require a variance, regardless of whether or when a permit has issued.

c. Prohibition.

Neither the Epsom Zoning Board of Adjustment nor the Planning Board may authorize the creation of new non-conforming lots nor approve a new non-conforming use without the requirement of a variance. The exceptions enumerated in Subsections iii and iv above are only applicable to bona fide pre-existing lots.

7. Pre-existing Non-Conforming Seasonal Dwellings.

a. Purpose and Intent.

The purpose of this Section is to acknowledge the existence of non-conforming seasonal dwellings, which uses, predate the original adoption of these Ordinances in 1969. It is further the purpose of this Section to permit the continued use of these non-conforming dwellings within the parameters enumerated within Article III, Section B; while limiting the pre-existing use to their continuous, uninterrupted and unenlarged seasonal nature. It shall be the explicit policy of these Ordinances to regard temporal expansion of a seasonal use to a year-round use as a “substantial” change as defined in Section B.4. This Section shall have no effect on conforming uses, seasonal or otherwise.

b. Seasonal Dwelling.

A structure that is designed to be used or is actually used for temporary residential use for less than twelve (12) months per year, or primarily for a specific or distinct season. This term includes, but is not limited to, lake house, hunting or snowmobile lodges or camps, summer camps or lodges.

c. Scope of Use.

All pre-existing non-conforming seasonal uses shall be allowed to be used to the same temporal extent as they have been used on a continuous and uninterrupted basis until abandoned or discharged. The burden shall be on the property owner to establish the season or periods of the year which the use has existed. In the absence of evidence to the contrary, seasonal summer use shall be presumed to be May 15 through October 30; and seasonal winter use October 15 through March 1, of each calendar year.

d. Permitted and Prohibited Use.

It is in the interest of public safety, health of the inhabitants, and furtherance of the Master Plan of the Town of Epsom to strive toward uniformity of the application of these Ordinances to all dwellings within the Town. To this end, pre-existing and non-conforming seasonal uses shall be allowed to be used to the temporal extent presumed under subsection c above, or actually established through evidence by the property owner, whichever may be greater. Any greater temporal use than permitted under this Section shall constitute substantial change and prohibited unless relief is granted under Section 6, above.

C. Ruins.

No owner or occupant of any land shall permit any ruins caused by fire, explosion, flood, storm, or other acts of God to be left unfinished or incomplete, thereon, but shall complete or remove the same within twelve (12) months of date of occurrence except when there is property in court litigation, completion or removal shall take place within one (1) year after settlement of such court action.

D. Junkyards.

1. Purpose and Intent.

The purpose of this Ordinance shall be to establish guidelines for the control and licensing of junkyards as required by RSA 236:115, and to delineate the policy and procedure for enforcement of these guidelines. As further described elsewhere in this Section, establishing and siting of a junkyard shall require license from the Board of Selectmen, a Special Use Permit from the Zoning Board of Adjustment, and Non-Residential Site Plan Review by the Planning Board. It is the intent of this Ordinance to support and encourage the reuse and recycling of materials wherever practicable.

2. Definition.

In addition to the definition set forth in RSA 236:112 (except for the number of unregistered vehicles allowed in volume or bulk) "Junkyard" means an establishment or place of business which is maintained, operated, or used for outdoor storing, keeping, buying, selling, or bartering junk, or for the maintenance or operation of any outdoor automobile graveyard. This definition includes scrap metal processors, auto wrecking yards, salvage yards, scrap yards, auto recycling yards, used auto parts yards, and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have similar such materials located on the premises.

This definition includes garbage dumps, sanitary landfills, and transfer stations that maintain outside storage. The definition does not include highway, or temporary operations, including, but not limited to, loading or crushing junk for processing or removal, and outdoor storage not to exceed thirty (30) days, unless specifically permitted by additional state licensing (such as dealer or repair licensing).

This definition does not include the keeping or storage of up to two (2) unregistered and uninspected automobiles (notwithstanding RSA 236:112) or the equivalent volume or bulk in other materials such as scrap metal, used machinery, and the like for private use as long as such use is not related to any off-site business pursuit or other junkyard establishment as otherwise defined in this Section, and further provided that the storage and placement of such private use junk is orderly and compact, and does not constitute a nuisance.

3. Application to Board of Selectmen (pursuant to RSA 236:115).

Application to operate a junkyard shall be made to the Board of Selectmen and including the following:

- a. The name, address, and telephone number of the individual or entity applying, naming the manager and corporate officers, if applicable,
- b. Whether or not the application is the result of a proposed transfer of ownership of an existing junkyard,
- c. Location of the junkyard, including a description of the land, a detailed sketch plan showing property lines and the limits of the junk storage area,
- d. Description of the type of operation and proof of legal ownership or right to use the property for the license period,
- e. A certificate signed by the applicant attesting that all provisions of state law have been or will be complied with before the location is used as a junkyard, and
- f. Payment by April first of the annual Salvage License Fee as allowed by most current State Statute.

The Selectmen shall take in to account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations or conditions imposed by the Zoning Board of Adjustment or Planning Board concerning the proposed junkyard, or any record of convictions for any type of larceny or receiving stolen goods, and to any other matter within this Section. (See RSA 236:117).

4. Licenses (pursuant to RSA 236:115).

A Salvage License shall not be issued by the Board of Selectmen unless:

- a. A Public Hearing with appropriate notice to abutters has been held by the Zoning Board of Adjustment and a Special Use Permit has been granted pursuant to Paragraph "5" below.
- b. A Public Hearing with appropriate notice to abutters has been held by the Planning Board and Non-Residential Site Plan Review approval has been granted.

- c. License approval shall be noted as personal to the applicant (a person or persons, or specifically named officers of a corporation) for a specific location. Licenses shall be neither assignable nor transferable. Upon proposed change of ownership, the prospective owner shall make application for a new Salvage License (RSA 236:117).
- d. License approval shall constitute permission to inspect the junkyard premises provided that written or verbal notice be given at least five (5) days prior to inspection. Junkyards shall be inspected annually prior to renewal of license, or as deemed necessary.

## 5. Special Use Permit.

The Zoning Board of Adjustment may grant a Special Use Permit for operation of a junkyard on land in or in proximity to the Residential/Commercial Zone. Current state law (RSA 236:96, 236:118) requires junkyards to be more than one thousand (1,000) feet from Interstate and Federal Primary Aid System Highways, more than six hundred sixty (660) feet from Class I, II, and III highway right-of- ways, and more than three hundred (300) feet from Class IV, V, and VI highway rights-of-way, and current Epsom Zoning Ordinances limit the Residential/ Commercial Zone to a depth of five hundred (500) feet from Routes 4 and 28. The purpose of this Section is to resolve the conflict between state law and the boundary of the Residential/ Commercial Zone. This Section establishes that a Special Use Permit may be granted for the operation of a junkyard outside of, but in proximity to, the Residential/ Commercial Zone to comply with state and local law. In granting a Special Use Permit, the Zoning Board of Adjustment shall take into account and may set specific conditions relative to the following:

### a. Location Requirements. (RSA 236:118)

The Zoning Board of Adjustment shall hear the applicant and all other persons wishing to be heard on the application and take into account the nature and development of the surrounding property such as proximity to schools, churches, hospitals, public buildings, or other places of public gatherings; and whether or not the use of the proposed location can be reasonably prevented from affecting the public health, safety, or morals by reason of offensive or unhealthy odors, smoke, discharges, or other causes. The Board shall also take into account the clean, wholesome, attractive environment of the Town by considering whether or not the use of this location can be reasonably prevented from having a demonstrable effect thereon. In considering this, the Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established tourist and recreation areas or main access routes thereto, as well as the reasonable availability of other sites for the junkyard.

### b. General Operating Requirements.

Junkyards are required to comply with the most current New Hampshire Department of Environmental Service's Green Yards Program Manual of Practice, also known as the Best Management Practices for Salvage Yards.

## 6. Site Plan Review.

The applicant shall apply to the Planning Board which may grant approval by the terms of the Town of Epsom Site Plan Regulations. Requirements established by the Planning Board may become specific conditions of operation granted by the Zoning Board of Adjustment in that Board's granting of a Special Use Permit.

## 7. Enforcement by Zoning Compliance Officer.

Violations of this Section may be determined by methods including, but not limited to, the following:

- a. Inspection.
- b. Admissions by the owner or operator.
- c. Information from other agencies.
- d. Information from third parties.

In addition to other legal remedies to citizens, a complainant may petition the Board of Selectmen to enforce the terms of this Section by a majority of abutters to a property that allegedly constitutes a junkyard, or by petition of any twenty- five (25) voters of the Town of Epsom. The Selectmen shall notify the alleged junkyard operator and provide him an opportunity to describe and explain his situation at a public meeting and propose and implement remedial action. This opportunity to describe and explain should be exercised before, but is not a necessary precondition to, implementation of zoning compliance enforcement procedures.

Each day that any junkyard remains in violation of this Section or applicable statutes shall constitute a separate violation, and penalties and sanctions be administered as written elsewhere in this Ordinance.

## 8. General Requirements.

No person may operate a junkyard, nor may any owner of land allow another to operate a junkyard contrary to the restrictions of the Epsom Junkyard Ordinance, or without first obtaining the required approval and permits.

No person may, nor may any owner of land allow another to store or keep more than two (2) unregistered or uninspected vehicles within a lot of land without first obtaining the required permits and approvals under these Ordinances.

## 9. Applicability of Junkyard Ordinance.

- a. All provisions of these Ordinances have been and remain applicable to all junkyards which commenced operation after September 15, 1969.



- b. Pre-existing, non-conforming junkyards. Any other part of these Ordinances to the contrary notwithstanding, on April 1, 2001, all provisions of these Ordinances including licensing and approval requirement shall be applicable to all pre-existing, non-conforming junkyards which were in lawful operation as of the original enactment of these Ordinances in 1969, and have continued unexpanded, uninterrupted operation up to the passage of this Ordinance; and those junkyards failing to obtain compliance by April 1, 2001 shall cease to operate.

#### E. Sanitary Protection.

All sanitary systems shall be constructed and maintained in accordance with standards set and enforced by the New Hampshire State Department of Health and the New Hampshire Department of Environmental Services.

#### F. Yard Sales.

Yard sales as defined by these Ordinances are permitted with the R/A, R/C and RLC Zones without the necessity of any permits or fees. Outdoor sales or sale activities which are conducted for more than six (6) days in any calendar year on the same lot of land are not yard sales but are seasonal, retail, wholesale or storage facilities or enterprises, as the context may permit which shall be subject to the regulations and restrictions embodied in these Ordinances to include a non-residential Site Plan review.

#### G. Residential Single and Multi-Family Residence Requirements.

##### 1. Single-Family Residences.

###### a. Location.

Single-family residences may be located in the R/A, R/C and RLC Zones.

###### b. Building Lots.

Building lots shall contain a minimum of two (2) acres per dwelling unit with a minimum of two hundred (200) feet of frontage on a public road. In the case of an arc, the frontage shall be measured as the chord of the arc. All building lots shall contain at least one-acre of contiguous buildable land, which is the area occurring within the property lines of a parcel or lot, excluding: setbacks, wetlands, natural or artificial channels through which water flows, ponds, public waters below the ordinary high-water mark, easements for pipelines and utility transmission lines, and land with slopes no greater than twenty-five percent (25%). Each lot may accommodate one dwelling structure with usual accessory buildings. No building or structure shall exceed two and one half (2½) stories in height.

###### c. Setback from Property Lines.

Every new building or structure shall be set back from the frontage property line not less than fifty (50) feet or such distance as shall conform to the line of existing buildings on

adjacent property. All new buildings or structures shall be set back no less than fifteen (15) feet from the side and not less than twenty (20) feet from the rear property line.

- d. Replaced by Article II, Section A (2) 3-14-06 (Reserved for future use).
- e. Single-Family Accessory Dwelling Unit (ADU):
  - i. One ADU may be constructed within or attached to a single-family residential unit.
  - ii. Either the single-family residential unit, or the ADU, shall remain occupied by the owner of the property as his/her principal place of residence.
  - iii. The ADU may not contain more than two (2) bedrooms. The maximum number of occupants per bedroom shall be limited consistent with policy adopted by the U.S. Department of Housing and Urban Development.
  - iv. An ADU shall be incidental to the primary use of the property as a single-family residence and shall not occupy more than eight hundred fifty (850) square feet within or adjacent to the single-family residence.
  - v. At least one (1) interior door must connect both units. This interior door may remain locked.
  - vi. Adequate parking shall be made available for occupants of the ADU to ensure off street parking.
  - vii. Prior to conversion of a single-family residence, or the construction of an ADU, the owner shall obtain a special exception as outlined in Article VI.E.5.
  - viii. Make provision for adequate water supply and sewage disposal service as required by RSA 674:72, V.
  - ix. A minimum of one off-street parking space for each ADU.
  - x. The lot on which an ADU shall be located will not be required to meet additional lot area requirements, frontage, space limitations, or other controls beyond that required for the existing single-family dwelling.

## 2. Two-Family Residences.

Two-family residences (duplexes) are permitted in the R/A and R/C Zones. All requirements for two-family residences are the same as for single family residences, except that the minimum lot size shall be four (4) acres for a two- family residence.

### 3. Multi-Family Residences with Three or More Units.

#### a. Purpose and Intent.

- i. The provisions relating to multi-family housing are established to preserve open space, promote affordable housing, and provide for the efficient use of land and utilities. In addition to other requirements contained in Article VI.E.5, Special Exceptions, the following requirements shall apply to all multi-family housing seeking a special exception pursuant to Article VI.
- ii. A “Multi-Family” residence or any derivative thereof shall mean a single structure containing no less than three (3) but no more than ten (10) residential dwellings therein.

#### b. Location.

Multi-family residences may be located in the R/A, R/C or RLC Zones.

#### c. Minimum Lot Size and Overall Density.

The minimum lot size for multi-family housing shall be at least six (6) acres. The maximum number of residential units permitted shall be determined by permitting one and one-half (1½) times the number of residential lots created for a conventional subdivision.

#### d. Frontage.

All multi-family residences shall maintain a minimum of three hundred (300) feet of frontage on a Class V or better public road. In the case of an arc, the frontage shall be measured as the chord of the arc.

#### e. Building Requirements.

All new buildings or structures shall be set back no less than seventy-five (75) feet from the side and rear property lines, and not less than seventy-five (75) feet from the property line fronting the public road. Each lot may accommodate more than one (1) residence structure. Each residence structure shall not exceed ten (10) dwelling units per structure. Each dwelling unit shall provide a minimum of four hundred (400) square feet per single bedroom unit and five hundred (500) square feet per two- (2) bedroom unit. All residence structures shall maintain a minimum spacing of one hundred (100) feet between structures and shall not exceed two and one-half (2½) stories.

#### f. Multi-Unit Ratio.

In those districts where multi-unit dwellings of three (3) or more units are allowed, the ration of area of unimproved land to the total area of living area, including all habitable floor area, driveways, parking lots, and carports shall not be less than fifteen to one (15:1).

g. Buffer.

A buffer area shall be of sufficient width to provide privacy and noise protection but shall not be less than the setbacks otherwise required in this Section. The buffer shall provide and maintain a strip of nativized plantings along and with the buffer area.

h. Sewage Disposal.

On-site sewage disposal must meet or exceed the requirements of the New Hampshire Department of Environmental Services in effect at the time of approval to assure that the site can sustain sewage disposal indefinitely. A replacement sewage disposal site shall be located and reserved on the property for multi-family developments of more than three (3) units.

i. Access Drives and Parking Lot Requirements.

All access driveways and parking lots for multi-family residences shall be maintained by the owners. There shall be provided off-street, on-site parking areas to allow one and one-half (1½) spaces for each one (1) bedroom dwelling unit with an additional half (1/2) space for each additional bedroom in the dwelling unit. All parking areas, including driveways that contain more than ten (10) parking spaces shall be paved. There shall be adequate provision for drainage and snow removal. Parking spaces shall be arranged so as not to necessitate the backing up of automobiles onto any street or driveway.

j. Non-Residential Site Plan Review.

Multi-family developments of three (3) or more dwelling units shall conform to procedural and plan requirements of the Town of Epsom Site Plan Regulations of the Planning Board.

4. Conversions of Existing Structures into Multi-Family Residences.

Multi-family residences of three (3) or more dwelling units which are created from existing structures must conform to the requirements of these Ordinances and regulations.

5. Elderly Multi-Family Apartment Residences with Three (3) or More Units.

a. Definition.

Elderly multi-family apartment residences mean a residential apartment building(s) for three (3) or more dwelling units designed for and occupied exclusively by elderly persons and owned by a New Hampshire non-profit corporation pursuant to RSA 292 and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Elderly persons mean single persons who are at least sixty-two (62) years of age; or a person who is at least sixty-two (62) years of age and his or her spouse; or the surviving spouse of a person at least sixty-two (62) years of age if the spouse was living in the unit at the time of the person's death; or persons who are at least sixty-two (62) years of age and an essential caregiver as determined by a licensed physician's certification.

b. Purpose and Intent.

The provisions relating to elderly multi-family apartment residences are established to preserve open space, promote affordable housing for the elderly, and provide for the efficient use of land and utilities consistent with the needs of the elderly population age sixty-two (62) and over. In addition to other requirements contained in Article VI.E.5, Special Exceptions, the following requirements shall apply to all elderly multi-family apartment residences seeking a special exception pursuant to Article VI:

c. Location.

Elderly multi-family apartment residences may be located in the R/A, R/C or RLC Zones.

d. Minimum Lot Size and Overall Density.

The minimum lot size for elderly multi-family apartment residences shall be at least fifteen (15) acres. The maximum number of residential units permitted shall be determined by permitting one (1) bedroom dwelling unit per ten thousand (10,000) square feet of buildable land or one (1) two- (2) bedroom dwelling unit per twelve thousand five hundred (12,500) square feet of land, or fifty (50) units, whichever is lesser.

e. Frontage.

All elderly multi-family apartment residences shall maintain a minimum of one thousand (1,000) feet of frontage on a state-maintained road. In the case of an arc, the frontage shall be measured as the chord of the arc.

f. Building Requirements.

All new buildings or structures shall be set back not less than seventy-five (75) feet from the side and rear property lines, and not less than seventy-five (75) feet from the property line fronting the public road. Each lot may accommodate more than one (1) residence structure. Each residence structure shall not exceed ten (10) dwelling units per structure. Each dwelling unit shall provide a minimum of four hundred (400) square feet per single bedroom unit and five hundred (500) square feet per two- (2) bedroom unit. All residence structures shall maintain a minimum spacing of twenty-five (25) feet between structures and shall not exceed two and one-half (2½) stories.

g. Multi-Unit Ratio.

In those districts where elderly multi-unit apartment dwellings of three (3) or more units are allowed, the ratio of area of unimproved land to the total area of living area, including all habitable floor area, driveways, parking lots, and carports shall not be less than ten to one (10:1).

h. Buffer.

A buffer area shall be of sufficient width to provide privacy and noise protection but shall not be less than the setbacks otherwise required in this Section. The buffer shall provide and maintain a strip of nativized plantings along and within the buffer area.

i. Sewage Disposal.

On-site sewage disposal must meet or exceed the requirements of the New Hampshire Department of Environmental Services in effect at the time of approval to assure that the site can sustain sewage disposal indefinitely. A replacement sewage disposal site shall be located and reserved on the property for elderly multi-family developments of more than three (3) units.

j. Access Drives and Parking Lot Requirements.

All access driveways and parking lots for elderly multi-family apartment residences shall be maintained by the owners. There shall be provided off-street, on-site parking areas to allow one (1) space for each one- (1) bedroom dwelling unit with an additional half (1/2) space for each additional bedroom in the dwelling unit. All parking areas, including driveways, shall be paved. There shall be adequate provision for drainage and snow removal. Parking spaces shall be arranged so as not to necessitate the backing up of automobiles onto any street or driveway.

k. Non-Residential Site Plan Review.

Elderly multi-family apartment developments of three (3) or more dwelling units shall conform to procedural and plan requirements of the Town of Epsom Site Plan Regulations of the Planning Board.

H. Cluster Residential Developments.

1. Purpose and Intent.

The purpose of a Cluster Residential Development is to encourage the preservation of open space for agricultural, recreational, and scenic use; to encourage flexibility in design for residential development by permitting single family residences to be grouped on lots of reduced dimensions to allow for a more economic provision of street and utility systems; and to establish living areas within the Town that provide for a balance of community needs. A Cluster Residential Development shall be subject to the granting of a Special Use Permit by the Planning Board in accordance with RSA 674:21.

2. Location.

Cluster Residential Developments may be allowed in the R/A, R/C and RLC Zones.

### 3. Tract and Lot Size.

The Cluster Residential Development tract to be subdivided shall be at least fifteen (15) acres. Individual lots within the tract may be reduced by as much as one-half (1/2) of the lot size required by the conventional zoning.

### 4. Frontage.

The Cluster Residential Development tract to be subdivided shall have enough frontage on a Class V or better public road to allow for a dedicated right-of-way of sufficient width to construct an access road adequate to carry the expected traffic load as outlined in the Town of Epsom Subdivision Regulations. Frontage of the lots within the tract may be reduced by as much as one-half (1/2) of the frontage required by conventional zoning.

### 5. Overall Density and Common Land.

The number of residential lots permitted in a Cluster Residential Development shall be determined by permitting that same number of lots as for a conventional subdivision. The amount of common land in the cluster residential development shall be the amount saved by the reduction in sizes of the residential lots; except that at least thirty percent (30%) of the development shall be common land, exclusive of land set aside for road rights-of-way, parking areas or utilities.

### 6. Common Land Management.

Ownership and maintenance to the required common land in a Cluster Residential Development must be determined and legally established prior to granting of a Special Use Permit by the Planning Board to ensure the permanent protection of this common land from development. This may include, but not be limited to, such instruments as a Homeowners' Association, or Conservation Trust, or management by a private, non-profit organization.

### 7. Sewage Disposal.

Individual lots within the Cluster Residential Subdivision that are proposed to be smaller than allowed by conventional zoning shall provide plans approved for subdivision by the New Hampshire Department of Environmental Services. Share or common septic systems are allowed.

### 8. Special Use Permit.

Application for a Special Use Permit for a Cluster Residential Development shall be made to the Planning Board as allowed by RSA 674:21. The Planning Board shall consider all relevant aspects of the Town of Epsom Subdivision Regulations in granting such a Special Use Permit. Variances to this Section may be granted by the Zoning Board of Adjustment upon appeal by the provisions of Article VI.E.4, of this Ordinance.

## I. Business.

For the purpose of the placement of permitted business and businesses granted by special exception, all businesses shall comply with these Ordinances and the Town of Epsom Site Plan Regulations to the satisfaction of the Planning Board.

### 1. General Business.

#### a. Location.

Businesses may be located in the R/C and RLC Zones as listed by the Table of Uses (Article II, Section C), page 6. Certain businesses may be located in the Residential/Agricultural Zone with a special exception by the Zoning Board of Adjustment.

#### b. Building Lots.

Building lots shall contain a minimum of two (2) acres per commercial lot with a minimum of two hundred (200) feet of frontage on a public road. In the case of an arc, the frontage shall be measured as the chord of the arc. Each lot may accommodate more than one (1) business structure but the gross first floor area of the building(s) to the total tract area shall not exceed a ratio of one to three (1:3). Each lot may accommodate more than one (1) structure of which may be a one-family residence dwelling; provided, however, that the total area of all buildings, including such residential dwelling, to the total area of the tract shall not exceed a ratio of one to three (1:3) (thirty-three and one-third percent (33.3%)). Twenty percent (20%) of the total tract area shall be landscaped or native vegetation and shall not be hard surface. No building(s) or structure(s) shall exceed two and one-half (2½) stories in height.

#### c. Setback from Property Line.

Every new building(s) or structure(s) shall be setback from the front property line (right-of-way) not less than fifty (50) feet, from the side property line not less than fifteen (15) feet, and the rear property line not less than twenty (20) feet.

#### d. Sewage Disposal.

Each lot shall provide a septic system approved by the New Hampshire Department of Environmental Services for the business uses for the tract of land.

#### e. Access Drive and Parking Requirements.

All access driveways and parking lots shall be maintained by the owner(s). Adequate parking must be provided off street. The development may be served by one (1) parking lot or individual parking lots serving groups of buildings.

#### f. All business shall conform to procedural and plan requirements of the Town of Epsom Site Plan Regulations of the Planning Board.



- g. No manufactured units, or any manufactured units designed to permanently house businesses shall be installed on any parcel of land on a permanent basis. To install such a unit on any parcel for a period of more than sixty (60) days during any calendar year shall constitute permanent installation.

For the purposes of this Ordinance, “manufactured unit” means any structure on a permanent chassis, transportable in one (1) or more sections which in the traveling mode is eight (8) body feet or more in width and forty (40) body feet or more in length or when erected on site is three hundred twenty (320) square feet or more and which is built and designed to house a business enterprise, or designed to be used as a dwelling but converted to accommodate a business enterprise with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical systems contained therein.

This definition does not include pre-site-built units as defined in RSA 674:31-A whether intended to be used by a business enterprise or intended to be used for housing but converted to accommodate a business enterprise.

This Ordinance does not prohibit the use or placement of temporary construction trailers which may be placed on a site during the progress of construction for a period not to exceed one hundred eighty (180) consecutive days.

## 2. Planned Business Developments.

- a. Purpose and Intent.

The provisions relating to Planned Business Developments are intended to encourage the efficient and unobtrusive placement of non-residential buildings to allow flexibility and variety in commercial development with the prescribed limits. The density of the tract as a whole will be increased compared to the density achieved by conventional regulations; however, a percentage of the tract must be reserved as undeveloped common land. A Planned Business Development shall be subject to the granting of a Special Use Permit by the Planning Board in accordance with RSA 674:21.

- b. Location.

Planned Business Developments may be allowed in the R/C and RLC Zones.

- c. Tract and Lot Size.

The Planned Business Development tract to be subdivided shall be at least five (5) acres in size. Individual lots within the tract may be reduced by as much as one-half (1/2) of the lot size required by the conventional zoning.

- d. Frontage.

The Planned Business Development tract to be subdivided shall have at least four hundred (400) feet of frontage on a Class V or better public road. This requirement may be reduced if there are no buildings in the development which front on the public road.

Frontage of individual lots within the tract may be reduced by as much as one-half (1/2) of the frontage required by the conventional zoning.

e. Building Requirements.

Contiguous groupings of buildings may be allowed where such groupings adequately provide for the safety and convenience of the users (such as fire protection, accessibility, snow removal) and are consistent with the intent of this Section.

f. Coverage Ratio.

The ratio of the gross floor area of the building(s) to the total tract area shall not exceed two to one (2:1). Ten percent (10%) of the total tract area shall be set aside as common land. Ten percent (10%) of each individual lot within the tract shall be landscaped or native growth and shall not be hard surfaced.

g. Sewage Disposal.

Individual lots within the tract that are proposed to be smaller than allowed by conventional zoning shall provide septic plans approved for subdivision by the New Hampshire Department of Environmental Services. Shared or common septic systems are allowed.

h. Access Drives and Parking Lot Requirements.

All access driveways and parking lots shall be maintained by owner(s). Adequate parking must be provided off street. The development may be served by one (1) common parking area or individual parking areas serving groups of buildings. Internal roads may be dedicated to the Town where access to individual lots, length of roadway, or future access to abutting land indicates such a need.

i. Special Use Permit.

Application for a Special Use Permit for a Planned Business Development shall be made to the Planning Board as allowed by RSA 674:21. The Planning Board shall seek to combine all relevant aspects of the Town of Epsom Subdivision Regulations and Town of Epsom Site Plan Regulations in granting such a Special Use Permit. Variances to this Section may be granted by the Zoning Board of Adjustment upon appeal by the provision of Article VI.E.4, of this Ordinance.

### 3. Seasonal (Intermittent) Business(es).

- a. Intermittent business(es) that operate during seasonal buying seasons and which utilize portable, temporary structures, and/or vehicles shall be allowed to operate in the Residential/Commercial Zone on business properties that have an approved Non-Residential Site Plan with the Planning Board provided that prior to its operation the intermittent business is granted approval by the Planning Board based on a review of the approved Site Plan for compatibility with the existing business use, and that a seasonal permit is obtained from the Zoning Compliance Officer.

Seasonal business(es) that wish to operate on a property that does not have an approved Non-Residential Site Plan with the Planning Board shall comply with the Non-Residential Site Plan Regulations to the satisfaction of the Planning Board and obtain a seasonal permit from the Zoning Compliance Officer.

- b. Seasonal business(es) may operate within the Residential/Agricultural Zone provided that a special exception is obtained from the Zoning Board of Adjustment, compliance with the Town of Epsom Site Plan Regulations with the Planning Board, and a permit is issued by the Zoning Compliance Officer.
- c. Any seasonal business in operation without a valid permit from the Zoning Compliance Officer will be in violation of these Ordinances and be subjected to the fines and enforcement as described within the Ordinances.

### J. Agricultural.

Farming, including dairying, livestock and poultry raising, horticulture, truck farming and other agricultural enterprises and the sale of the products realized from farming is permitted.

### K. Home Occupations.

1. Residences may be used to house home occupations as defined under this Ordinance. It is the purpose and intent of this Ordinance to maintain the non-commercial character of the Residential/Agricultural Zone while permitting secondary business uses by a resident proprietor.
2. Home occupation shall mean such use which is not the primary use, but is secondary, accessory, and incidental to that of a residential dwelling; and
  - a. No more than two (2) persons may be employed or occupied in furtherance of the occupation or business at any one (1) location at any given time, excluding the one (1) resident proprietor.
  - b. Reasonably adequate lighting, parking and means of access and egress shall be provided to accommodate the particular type of operation.

- c. Hours of operation shall be limited to no earlier than 8:00 a.m. and not later than 8:00 p.m., unless otherwise permitted by the Planning Board; no excessive noise, odors and smoke may be emitted so as to disturb the residential character of the surrounding area.
3. Consistent with this Ordinance, the resident proprietor may park one (1) vehicle and store tools and equipment necessary to perform an off-site service occupation, provided that the resident proprietor is regularly engaged in the occupation and further provided that the tools and equipment are stored indoors or in an operational, registered, and inspected vehicle and such use does not alter the character of the use as that of a residential dwelling.
4. A Non-Residential Site Plan Review shall be required to operate a home occupation. The applicant shall apply to the Planning Board which may grant or deny approval pursuant to the Town of Epsom Site Plan Regulations.
5. After a Site Plan has been approved by the Planning Board a permit must be obtained from the Zoning Compliance Officer before the use of any land within the Town as a home occupation. No person may operate, nor cause to be operated a business in the residential area without first obtaining a permit to do so as a home occupation, or without having first obtained other approval or permit necessary for the lawful operation of such business. Each day of violation of this Ordinance shall constitute a separate violation. Exemption or exceptions claimed to the application of this Ordinance shall constitute affirmative defenses.
6. All pre-existing home occupations which:
  - a. commenced operation legally and in conformity with all local and state regulations, and
  - b. have been in continuous operation since the lawful commencement of the use and up to the effective date of this Ordinance, and
  - c. have not substantially changed or enlarged the operation since the commencement of the use,

shall be exempt from the new restrictions of this Ordinance, including that of a permit requirement and shall be governed by the 1995 Ordinance unless:

- a. the business or occupation ceases to be in continuous operation for any one-year (1) period, or
- b. the business or occupation has substantially changed or enlarged, or
- c. the business or occupation is engaged in conduct which is hazardous to public health and safety or has become a nuisance.

At which time all restrictions of this Ordinance shall become applicable.

7. The Planning Board, consistent with its procedural rules, shall develop forms for application for a home occupation and a home occupation permit. The administrative decisions of the Zoning Compliance Officer may be appealed to the Zoning Board of Adjustment, consistent with New Hampshire law.

## L. Campgrounds.

### 1. Purpose and Intent.

It is the purpose of this Ordinance to allow and promote the operation of recreational campgrounds within the Town which are for the recreation and temporary accommodation of visitors. It is also the intent of this Ordinance to discourage and prohibit the use of campgrounds for purposes other than temporary and recreational. Campsites located with campgrounds do not meet the local and state requirement for single-family dwellings, such as lot size, frontage, setback, sewage disposal and water source. The use of a campsite as a residential dwelling devastates the environment, adversely impacts the surrounding property, is contrary to the rural character of the Town, and is unseemly. This illegal use over uses sewage disposal systems not designed for such intensive usage and constitutes a hazard against public health and safety. The illegal occupancies area strain on the Town's treasury budget and services intended for lawful residents.

### 2. Permitted Zones.

Campgrounds are permitted in the R/A, R/C and RLC Zones only after Non- Residential Site Plan Review by the Planning Board and the issuance of a special exception from the Zoning Board of Adjustment.

### 3. Definition.

"Campground" or "recreational campground" or "recreational camping park" shall mean any parcel of land on which two (2) or more campsites are occupied or are intended to temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residency. "Campsites" shall mean a parcel of land in a recreational campground or camping park for the placement of a tent or a recreational vehicle for the exclusive use of its occupants.

### 4. Recreational or Temporary.

To determine whether an occupant of a campsite is recreational and temporary in nature, as opposed to residential and permanent, the following criteria, among other factors, may be considered:

- a. Whether any occupant of the site presently resides at the site with the intent to so reside within the foreseeable future.
- b. Whether any occupant of the site is attending a school, college, university or trade school, or is registered to attend at an institution which is within a commuting distance of the campground.
- c. Whether any occupant of the site is employed or contracted to work at a location within a commuting distance of the campground.

- d. Whether the occupation of the site is only on weekends and holidays or continues throughout the week.
- e. The number of days in any given three hundred sixty (360) days period which an occupant of the site actually resides at a site and receives mail at the campground.
- f. Actual outdoor recreational activities undertaken by the occupants of a site.

#### 5. Conditions for Prima Facie.

Any of the following conditions shall constitute prima facie evidence that a site at a campground is being used for permanent residential purposes and not temporary, recreational uses:

- a. If any occupant of a campsite at any campground runs for or occupies public office relying on his residential address at the campground.
- b. If any occupant of a campsite at any campground registers to vote as a resident of the Town relying on his residential address at the campground.
- c. If any occupant of a campsite at any campground:
  - i. registers a vehicle in Epsom, or
  - ii. obtains a driver's license relying on his residential address at the campground, or
  - iii. applies for a license or permit of any kind from any state, local or federal agency relying on his residential address at the campground.
- d. If any occupant of any campsite at any campground receives, claims eligibility for or applies to receive any federal, state or local benefit, entitlement, assistance, grant, loan or award relying on his residential address at the campground, or disclosing the campground as his address.
- e. If any occupant of a campsite at any campground attends or enrolls to attend Epsom public schools (including Pembroke Academy) relying on his residential address at the campground.
- f. If any occupant of a campsite at any campground files any action at any court or enters into any contract or attempts to enter into any contract relying on his residential address at the campground or disclosing the campground as his address.
- g. If any occupant of a campsite at any campground does not have, keep or maintain a primary dwelling for his use and as his residence at the time of his occupation of the campsite.

## 6. Occupation of Campsites.

No person who owns, manages or has charge of any campground may allow, or cause to be allowed, the occupation of any campsite at a campground contrary to this Ordinance, nor allow any person to reside at a campsite within a campground for other than recreational and temporary purposes. No person may operate a campground in Epsom, without the necessary permits and approvals, nor contrary to or in breach of any conditions imposed as a part of such approvals. No person may occupy a campsite in Epsom for other than temporary and recreational purposes. Exemptions or exceptions to this Ordinance shall be affirmative.

## 7. Application of Restrictions.

The provisions of this Ordinance attempt to clarify and accommodate the application of the restrictions imposed on campgrounds. This Ordinance is intended to and shall apply to all pre-existing campgrounds in operation as of March 1996, except to the extent a Site Plan Review or a special exception shall not be required of a pre-existing campground which:

- a. commenced its operation legally and in conformity with all local and state regulations, and
- b. has been in continuous operation since the lawful commencement of the use and up to the effective date of this Ordinance, and
- c. has not substantially changed or enlarged the operation since the commencement of the use.

Such campgrounds shall be exempted from the new restrictions of this Ordinance and shall be governed by the 1995 Ordinance, unless:

- i. the business or occupation ceases to be in continuous operation for any (1) one-year period, or
- iii. the business or occupation has substantially changed or enlarged, or
- iii. the business or occupation is engaged in conduct which is hazardous to public health and safety or has become a nuisance.

At which time, all restrictions of this Ordinance shall become applicable.

## M. Signs.

### 1. Sizes.

Allowable farms, businesses, professions, or service industries shall be permitted no more than two (2) signs, each not exceeding a total of fifty (50) square feet. The permitted sign area may be comprised of a permanent changeable letter sign or permanently imprinted sign in whole or in any combination thereof, so long as the total area of each sign does not exceed fifty (50) square feet. Each face of a sign constitutes a sign. This Section does not pertain to home occupations which are governed by Subsection "a".

- a. Signs for home occupation businesses shall not exceed one (1) sign (1 or 2 sided) totaling no more than eight (8) square feet in area.
- b. Internally lit signs will be allowed only within the Commercial Zone. Neon tubular glass, flashing, digital or animated electric signs shall not be permitted.
- c. Internally lit signs are only allowed on the business premises. Signs lighted by exterior sources will be permitted provided the lights illuminate only the sign.

## 2. Temporary Signs.

A temporary sign is a sign erected for limited time-use, including banner signs. No temporary sign shall be placed on any property without first obtaining a temporary sign permit. All owners of the property shall sign the temporary sign permit. A temporary sign permit application must be completed by the applicant and approved by the Town prior to erecting any temporary sign. A temporary sign permit shall be granted for a period of ninety (90) calendar days and may be renewed for one additional thirty (30) day period in a calendar year. RSA 236:88 shall apply to all applications for temporary signs.

- a. The following shall be considered temporary signs, which do not need a permit:
  - i. Incidental signs directing and guiding traffic that do not exceed two (2) square feet each.
- b. Conditions for placement and granting of temporary signs:
  - i. A temporary sign may not extend into the public right-of-way.
  - ii. Only one (1) on-site temporary sign may be located on a parcel at any given time.
  - iii. A temporary sign must not create a potential hazard to vehicle or pedestrian traffic.
  - iv. A temporary sign must not obstruct the view of any portion of a traffic control device or signal.
  - v. A temporary sign must not impede or interfere with the repair or maintenance work of the Town or abutting property owner.
  - vi. A temporary sign must be self-supporting and must not be attached to any Town property such as fences, benches, bus shelters, trees, light poles or traffic signal poles.
  - vii. Roof-mounted temporary signs are not allowed in any zoning district.
  - viii. No temporary sign shall exceed sixteen (16) square feet in area.
  - ix. Doubled faced temporary signs may be permitted but each face shall count as a single sign.



- x. Temporary signs may not be illuminated or include any lighting which may distract vehicular or pedestrian traffic or cause glare or other light pollution.
- c. Granting and Removal of Temporary Signs.
- i. A sign for which the permit was secured shall be removed within twenty-four (24) hours of the expiration of the permit.
  - ii. A temporary sign shall be granted for a period of thirty (30) calendar days and may be renewed for an additional thirty (30) days in a calendar year.
  - iii. The Town may enter upon the private property in order to remove a temporary sign which has not been removed by the time specified in the permit.
  - iv. The Town shall not be responsible for the loss or damage to any temporary sign removed by the Town. The Town will retain any temporary sign removed under these provisions for a period of three (3) calendar days during which time the sign may be reclaimed, after such time the sign will be disposed of by the Town at the expense of the applicant.
  - v. If the Town had to remove the temporary sign, the owner of the property shall reimburse the Town for all labor and equipment cost necessary to remove such sign.
  - vi. No additional temporary sign permit will be issued for the property until such fees are paid.

### 3. Off Premises Signs.

Off premises signs are permitted only in a commercial zone. Off premises signs are also permitted in the R/A, RLC and R/C Zones, subject to all state and federal regulations.

- a. A permit from the Selectmen is required for off premises signs along with the signature of the landowner granting permission to erect the sign.
- b. A maximum of two (2) off premises signs, each face no larger than six (6) square feet, with each face constituting one (1) sign, shall be permitted.

### 4. Additional Size Requirements.

In those instances where the number of permitted businesses, professions or service enterprises on a given lot is greater than two (2), that lot shall have only one (1) collective two (2) faced free standing sign. The total sign area for such a collective sign shall be one hundred (100) square feet in total. In accordance with other parts of this Section, one (1) changeable letter two (2) face sign up to thirty-two (32) square feet per face may be allowed when permanently mounted with the one (1) collective sign, provided that its area is counted toward the total allowable area of one hundred (100) square feet.

#### 5. Mounted Signs.

In addition to signs allowed elsewhere in this Section, signs that are up to thirty-six (36) square feet (twice that usually allowed for a single sign) may be mounted directly on the building, provided that such signs do not protrude more than one (1) foot from the walls or above the ridgeline of the building.

#### 6. Height Requirements.

No freestanding signs whether on or off the premises shall exceed sixteen (16) feet in height. The height for the purposes of this subsection shall be measured from the highest point of the sign or the structure containing the sign, whichever is higher. Sign sizes shall be measured by the face of the sign, not to exceed the allowable square footage of the sign within the appropriate subsection of this Ordinance. Signposts and/or decorative displays shall not exceed one (1) foot on either side of sign and not more than three (3) feet on the top.

#### 7. Sign Removal.

Any permitted farm, business, professional or service enterprise which has ceased to operate for a period of at least one (1) year shall forthwith remove all signs along with any and all associated structures and materials which may have been erected on or off of its premises. Such removal shall occur no more than thirteen (13) months after the cessation of the business or professional enterprise. Signs which shall remain after the designated time period shall constitute a nuisance under these Ordinances, but subject to removal by the proper authority and the cost of the removal shall be taxable to the owner of the parcel or the parcels of the land which may contain such signs.

#### 8. Copy Substitutions.

The copy on any commercial sign may be substituted with noncommercial copy.

#### 9. Town, State or Federal Signs.

Official Town, State or Federal signs, including traffic control devices, are considered government speech and shall be exempt from this Section.

#### 10. Validity of Provisions.

The invalidity of any provision of this Ordinance shall not affect validity of any of the provisions. If any Section, clause, provision, or portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding will not affect or impair any other Section clause, provision, or portion of this Ordinance.

## N. Special Provisions.

### 1. Hazardous Waste.

In order to maintain the health, safety, and welfare of the Town, the storage, disposal, burying or dumping of any hazardous wastes within the limits of the Town are prohibited.

- a. For the purpose of this Section “hazardous waste” is defined as any solid, liquid or contained gaseous waste, or any combination of these wastes, which because of either quantity, concentration, or physical, chemical or infectious characteristics may cause or contribute to any increase in mortality, or an increase in irreversible or incapacitating reversible illness, or pose a present or potential threat to human health or the environment when improperly treated, stored, disposed of or otherwise mismanaged.
- b. Hazardous wastes are also those wastes identified as hazardous by the State of New Hampshire using the criteria established under RSA 147-A:2, VII. They include, but are not limited to toxins, corrosives, ignitables, irritants, strong sensitizers or that which generate pressure through decomposition, heat, or other means.
- c. Controlled usage and storage for personal or private use of such hazardous wastes shall be permitted upon the obtaining of a permit from the Board of Selectmen after obtaining a permit from the State of New Hampshire RSA 147-A:4. Controlled usage and storage shall not include the sale or use of such hazardous wastes by the public or by other than the person to whom such permit is issued.
- d. Violations of the Ordinance shall be punishable by a fine of One Hundred Dollars (\$100) for each day the offense continues.

### 2. Regulation of Excavations.

The excavation of soil, loam, sand, gravel, or ledge, except for the lawful activities as permitted under this chapter, shall be allowed in the Town only upon application to the Board of Selectmen for a permit and the fulfillment of the requirements delineated under New Hampshire RSA 155-E, to the satisfaction of the Planning Board.

## O. Churches.

Churches, temples or other houses of worship for bona fide religious worship are permitted in the R/C and RLC Zones subject to a Site Plan Review by the Planning Board. Such uses shall be subject to a special exception from the Zoning Board of Adjustment, and a Site Plan Review by the Planning Board in the Residential/Agricultural Zone. The provisions of these Ordinances are generally applicable to the construction and establishment of business enterprises including Article III.I, shall be applicable to uses permitted under this Ordinance.

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P. Hotels, Motels, Inns, Resorts, Bed & Breakfasts.

1. Definition.

Hotels, motels, inns, and resorts (hotels, collectively) shall mean a building or group of buildings which contain and offer overnight accommodations for transient, non-resident occupancy. This definition does not include bed and breakfast establishments. Bed & breakfasts are similar, but smaller establishments (usually in single family dwellings) that also provide guests with incidental, limited food service. Bed & Breakfasts with more than four rental bedrooms are considered to be hotels.

2. Purpose.

Tourism is an important element of local economy. This Ordinance seeks to encourage land use consistent with promoting tourism. This Ordinance permits the construction of hotels to accommodate the tourists, visitors, and business travelers. This Ordinance specifically discourages and prohibits the use of any hotel unit as a permanent dwelling or residential quarters. Such uses are subject to the regulations established for multi-family residential dwellings of Article III.G.3.

3. Permitted Zones.

Hotels are permitted in the RLC and R/C Zones subject to a Site Plan Review by the Planning Board. Hotels are permitted in the Residential/Agricultural Zone subject to a Site Plan Review by the Planning Board and a special exception from the Zoning Board of Adjustment. Bed & Breakfasts are permitted in all zones and are subject to a Site Plan Review by the Planning Board.

4. Conditions and Restrictions.

The Planning Board during the Site Plan Review process may impose permanent conditions and restrictions concerning the number of units, number of guests accommodated, number of units which may have any cooking or kitchenette facilities or any other conditions which may ensure the facility will continue to be used for the exclusive purposes which it has been authorized to operate.

5. Keepers' Quarters.

The owner, manager, caretaker, or keeper of any hotel and his/her family may reside within the hotel's grounds on a year-round permanent basis in quarters designated for such purpose so long as the keeper's quarters are approved by the Planning Board for such use. Bed & Breakfasts are not subject to these restrictions.

## 6. Prohibition.

Except as otherwise permitted in Section 5, above, no person who owns, manages or has charge of any hotel or Bed & Breakfast may allow, or cause to be allowed the occupation of any unit within a hotel or Bed & Breakfast contrary to this Ordinance nor allow any person to reside within a hotel or Bed & Breakfast for other than recreational, temporary, or transient purposes, nor allow a person to primarily or permanently reside in a hotel or Bed & Breakfast. No person may operate a hotel or Bed & Breakfast in Epsom without the applicable approval nor in violation of any conditions-imposed incident to such approvals. No person may reside in a hotel or Bed & Breakfast in Epsom for other than temporary purposes.

## 7. Recreational or Temporary.

To determine whether an occupation of a hotel or Bed & Breakfast is recreational and temporary in nature, as opposed to residential and permanent, the criteria delineated in Article III.L.4, and III.L.5, shall be effective and operative with the necessary changes to apply the same to hotels and hotel rooms or Bed & Breakfast.

## 8. Applicability of Restrictions.

All restrictions and requirements generally applicable to business enterprises under Article III.I, shall be applicable to hotels.

## Q. Manufactured Housing.

### 1. Purpose.

It is the intent of this Ordinance to provide regulations over existing, replacement and new manufactured housing within the Town. Specifically, it is the intention that lawfully existing manufactured housing as of the time of this Ordinance be continued until abandoned. It is further the intention of this Ordinance to limit future manufactured housing to manufactured housing parks, and to ensure that the ratio of manufactured homes to single family residences be adjusted proportionately to the average ratio in other towns throughout the state while providing adequate low- and moderate-income housing within Epsom.

### 2. Definitions.

#### a. "Manufactured Housing".

Consistent with RSA 674:31 "...manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this Section shall not include pre-site-built housing

as defined in RSA 674:31-a.” Any reference in these Ordinances to “manufacturing homes” or “mobile homes” shall be deemed a reference to “manufactured housing”.

b. “Manufactured Housing Park.”

A “manufactured housing park” shall have the same meaning as set forth in RSA 205-A:1, II being “any parcel of land under single or common ownership or control which contains or is designed, laid out or adapted to accommodate 2 or more manufactured houses,” and shall further incorporate all terms, conditions and further requirements imposed by these Ordinances. Any parcel of land used for storage for display of manufactured housing shall not be considered a “manufactured housing park” but shall not be deemed permitted unless otherwise in compliance with all the provisions of these Ordinances.

c. “Individual Lot Manufactured Housing.”

Any manufactured home situated upon a single residential building lot shall for the purposes of this Ordinance be defined as “individual lot manufactured housing”.

d. “Manufactured Housing Subdivision.”

Any subdivision dedicated and approved for manufactured housing only shall for the purposes of this Ordinance be defined as a “manufactured housing subdivision”.

3. Prohibitions.

a. “Individual Lot Manufactured Housing.”

As of the effective date of this Ordinance, no “individual lot manufactured housing” shall be permitted.

b. “Manufactured Housing Subdivisions.”

As of the effective date of this Ordinance, no “Manufactured housing subdivisions” shall be permitted.

4. Manufactured Housing Parks.

a. As of the effective date of this Ordinance, no manufactured housing shall be placed, constructed, or occupied except as provided in these Ordinances.

b. As of the effective date of this Ordinance, “manufactured housing parks” shall only be permitted in the R/A and R/C Zones.

c. Reporting Requirement.

The owner (or designee) of every manufactured housing park shall on or before June 1<sup>st</sup> of each year file a report with the Epsom Board of Selectmen which shall contain the following:

- i. A description of the manufactured housing unit occupying each site along with the site designation by number or other lettering system. This shall include the serial number of the unit.
- ii. Name and address of the owner of the manufactured housing unit.
- iii. The date that the unit was placed on the site.

This Section shall apply to all manufactured housing parks including pre-existing parks.

d. No new “manufactured housing parks” shall be permitted without first obtaining the following:

- i. A “Certificate of Compliance” from the Zoning Compliance Officer.
- ii. Site plan approval from the Planning Board in accordance with the governing laws and any Town of Epsom Site Plan Regulations adopted by the Town of Epsom or hereafter amended or adopted.
- iii. A special exception in accordance with Article VI.E.5, of these Zoning Ordinances.

e. No new “manufactured housing parks” nor any expansion to any “manufactured housing parks” existing as of the effective date of this Ordinance shall be permitted if the lots, sections or manufactured homes proposed therein, when added to all other manufactured housing units then existing within the Town, divided by the total number of housing units then existing in the Town result in a number greater than the “benchmark” defined herein. The “benchmark” shall be the most recent available ratio resulting by dividing the total number of the manufactured housing units into the total number of housing units for the entire Central New Hampshire Region as maintained by the Central New Hampshire Regional Planning Commission or the successor to its duties.

Illustration:  $(a+b)/c=X$ ,  $d/e=Y$ , X may NOT exceed Y:

- a= Total number of manufactured housing units in Epsom at the time of application.
- b= The number of manufactured housing units proposed to be constructed in the application.
- c= Total number of housing units in Epsom at the time of the application.
- d= Total number of manufactured housing units in the Central New Hampshire Region as maintained by the CNHRPC.
- e= Total number of housing units in the Central New Hampshire Region as maintained by the CNHRPC.

- f. No “manufactured housing park” shall be less than twelve (12) acres and no such park shall contain less than four (4) manufactured homes. Notwithstanding the definition of manufactured housing in Section 2.a, above, no manufactured home shall be located in Epsom, or transferred from any lot or parcel to any other lot or parcel in Epsom, if containing less than seven hundred eighty (780) square feet of interior.
- g. All piping for water, sewage and utilities shall, from the point of exit from any manufactured home, be constructed, located, and maintained underground.
- h. Conservation easements and natural open spaces shall be encouraged in all manufactured housing parks, such that each lot or section therein is given reasonable access to such area. Each “manufactured housing park” shall provide adequate fire protection and planning.
- i. No manufactured home, pre-existing or hereafter created, may be altered, enlarged, improved or rehabilitated, or replaced without first obtaining a permit consistent with Article VI.
- j. The owner of each “manufactured housing park”, whether pre-existing or hereafter created, shall maintain a register, available for inspection by the Zoning Compliance Officer, which register shall include the following information:
  - i. The name and permanent address of the owner of each manufactured home.
  - ii. The name of each occupant of any such manufactured home, if different.
  - iii. The make, serial number, year of manufacture, and dimensions of each manufactured home.
  - iv. The lot or identification number for each or section within the manufactured housing park.
  - v. The date of placement or construction of each manufactured home.
- k. Each “manufactured housing park” owner shall have prepared a Site Plan for the entire tract, prepared by a registered professional engineer or registered land surveyor. Said Site Plan shall show and locate each manufactured home, roadway, permanent building, buffer zone, common area, lot or section, or other structures or conditions within said park.

#### 5. Conditions of Operation.

Every owner of each “manufactured housing park” hereafter created shall comply with every condition imposed by Epsom Land Use Boards and shall operate only within parameters of the Site Plan approved and within these Ordinances. Every owner of each pre-existing manufactured housing shall comply with all restrictions then applicable either by then-existing Ordinances, plans, agreements, decrees, or orders in addition to those conditions specifically made applicable to pre-existing parks by these Ordinances.



## 6. Non-Conforming Uses.

Pre-existing, non-conforming manufactured housing parks shall operate subject to the provisions of Article III.B.3, 4, 5, and 6, of these Ordinances as they may be applicable. Any manufactured housing which is placed or constructed on any site shall, however, be required to obtain a Zoning Compliance Permit and a Certificate of Occupancy as delineated under Article VI, regardless of whether such unit is being placed on a new site or a pre-existing site.

## R. Telecommunication Towers.

### 1. Purpose and Intent.

This Ordinance is enacted in order to establish general guidelines for the sighting of telecommunication towers and antennas and to enhance and fulfill the following goals:

- a. Preserve the authority of the Town to regulate and to provide for reasonable opportunities for the sighting of telecommunication facilities while ensuring that telecommunication provider's service remains effective and efficient.
- b. Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.
- c. Provide for co-location and minimal impact sighting options through an assessment of technology, current locational options, future location availability, innovative sighting techniques, and sighting possibilities beyond the geographic boundaries of the Town.
- d. Permit the construction of new towers only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of towers and antennas to configure them in a manner that minimizes visual impacts of said structures.
- e. Require antenna co-location on existing tower structures through cooperation and agreements between providers.
- f. Provide for documentation of scheduling of recurring maintenance and safety inspections for all telecommunications facilities and appurtenances.
- g. Provide for the demolition and removal of abandoned facilities. Provide a procedure for the Town to remove abandoned towers to provide for the health and safety of citizens.
- h. Provide for the removal or upgrade of technologically outmoded facilities.

## 2. Location.

Telecommunication facilities shall be allowed in accordance with the following:

- a. Permitted, subject to a special exception, in the Commercial Zone and the land surrounding the Commercial Zone up to a distance of one thousand (1,000) feet to the nearest point falling within the Commercial Zone provided, however, that no such structure may be placed on any point south of the Commercial Zone boundary of Route 28 south of Epsom Circle.
- b. In other areas within the Town, only as a co-location on pre-existing towers, antennas, and alternative tower structures.

## 3. Definitions.

- a. **Act** – The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include future amendments to the Communications Act of 1934.
- b. **Affiliate** – When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator’s principal partners, shareholders, or owners of some other ownership interest, and when used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.
- c. **Alternative Tower Structure** – Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also *Stealth Facility*).
- d. **Analog Technology** – Replicates and amplifies voice messages as they are carried from the transmitting antenna to the receiving antenna.
- e. **Antenna** – Any exterior apparatus designed for telephonic, radio, or television communications through sending and/or receiving of electromagnetic waves.
- f. **Antenna Height** – The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and the lowest grades shall be used in calculating the antenna height.
- g. **Antenna Support Structure** – Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

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- h. **Applicant** – A person who applies for a wireless facility sighting. An applicant can be the owner of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, or architect.
- i. **Broadcast** – To transmit information over the airwaves to two (2) or more receiving devices simultaneously. Information can be transmitted over local television or radio stations, satellite systems, or wireless data communications networks.
- j. **Cell Site** – A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s), and parking, and may include other uses associated with an ancillary to cellular communications transmission.
- k. **Cellular Service** – A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.
- l. **Cellular Telecommunications** – A commercial Low Power Mobile Radio Service licensed by the Federal Communications Commission (FCC) to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.
- m. **Cellular Telecommunications Facility** – A cellular telecommunications facility consists of the equipment and structures involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
- n. **Co-location** – Locating wireless communications equipment from more than one (1) provider on a single site.
- o. **Common Carrier** – An entity licensed by the FCC or a state agency to supply local and/or long-distance telecommunications services to the general public at established and stated prices.
- p. **Communication Tower** – A guyed, monopole, or self-supporting tower constructed as a free-standing structure or in association with a building, other permanent structure, or equipment, containing one (1) or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.
- q. **Communications Facility** – A land use facility supporting antennas and microwave dishes that sends and/or receives radio frequencies signals. Communications facilities include structures or towers and accessory buildings.
- r. **Communications Transmission System or Communications System** – A wired communication transmission system, open video system, or wireless communications transmission system regulated by these regulations.

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- s. **Comprehensive or Master Plan** – The current adopted Comprehensive/Master Plan of the municipality.
  - t. **C.O.W.'s – Cells on Wheels**, see *Temporary Wireless Communication Facility*.
  - u. **Digital Technology** – Technology that covers voice and data messages into digits that represent sound intensities at specific points of time and data content.
  - v. **Directional Antenna** – An antenna or array of antennas designed to concentrate a radio signal in a particular area.
  - w. **Dish Antenna** – A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.
  - x. **ESMR** – Enhanced Specialized Mobile Radio.
  - y. **FAA** – The Federal Aviation Administration.
  - z. **FCC** – The Federal Communications Commission.
  - aa. **Frequency** – The number of cycles completed each second by a sound wave, measured in hertz (Hz).
  - bb. **Governing Authority** – The Epsom Board of Selectmen.
  - cc. **Grade** – The lowest point of elevation of the finished surface of the grounds, paving, or sidewalk within the area between the structure and the property line, or when the property line is more than five (5) feet from the structure, between the structure and a line five (5) feet from the structure.
  - dd. **Guyed Tower** – A communication tower that is supported in whole or in part by guy wires and ground anchors.
  - ee. **Lattice Tower** – A guyed or self-supporting three (3) or four (4) sided, open, steel frame structure used to support telecommunications equipment.
  - ff. **License** – The rights and obligations extended by the municipality to an operator to own, construct, maintain, and operate its system within the boundaries of the municipality for the sole purpose of providing services to persons or areas outside the municipality.
  - gg. **MHZ** – Megahertz or 1,000,000 Hz.
  - hh. **Micro Cell** – A lower power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve.

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- ii. **Microwave** – Electromagnetic radiation with frequencies higher than one thousand (1000) MHz, highly directional signal used to transmit radio frequencies from point to point at a relatively low power level.
  - jj. **Microwave Antenna** – A disk-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.
  - kk. **Monopole Tower** – A communication tower consisting of a single pole, constructed without guy wires and ground anchors.
  - ll. **Omnidirectional Antenna** – An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it was designed.
  - mm. **Owner** – The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the office of the Tax Collector. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment record, but who presents to the municipality a copy of a deed or contract of sale showing date of sale or potential sale.
  - nn. **Personal Communications Services or PCS** – Digital wireless telephone technology such as portable phones, pagers, faxes, and computers. Such mobile technology promises to allow each consumer the same telephone number where he or she goes. Also known as Personal Communication Network (PCN).
  - oo. **Pre-existing Towers and Antennas** – Any tower or antenna for which a permit has been issued prior to the effective date of these regulations and is exempt from the requirements of these regulations so long as the towers or antennas are not modified or changed.
  - pp. **Public Property** – Any real property, easement, air space or other interest in real estate, including a street, owned by or controlled by the Town or any other governmental unit.
  - qq. **Roof and/or Building Mount Facility** – A low power mobile radio service telecommunications facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or building face.
  - rr. **Scenic View** – A scenic view is a view that may be framed, wide angle, or panoramic and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway or path. A view may be to a faraway object such as a mountain or of a nearby object.
  - ss. **Self-Storage Facility** – Any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such a facility for the purpose of storing and removing personal property.
  - tt. **Self-Support Tower** – A communication tower that is constructed without guy wires and ground anchors.

- uu. **Spectrum** – Relating to any transmissions or reception of electromagnetic waves.
- vv. **Stealth Facility** – Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas; building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, and antenna structures designed to look like light poles. (See also *Alternative Tower Structures*).
- ww. **System** – The communications transmission system operated by a service provider in the municipality.
- xx. **Telecommunications** – The transmission, between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- vv. **Temporary Wireless Communication Facility** – Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference where a majority of people attending are wireless users.
- zz. **Tower** – Tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.
- aaa. **Wireless Communication Facility** – An all-encompassing definition; any towers, poles, antennas, or other structures intended for use in connection with transmission or receipt of radio and television signals, or any other spectrum-based transmissions/receptions.
- bbb. **Whip Antenna** – An antenna that transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape and are less than six (6) inches in diameter and measure up to eighteen (18) inches in height. Also called omnidirectional, stick or pipe antennas.
- ccc. **View Corridor** – A view corridor is a three-dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would resident in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include 360-degree perspectives. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights may be limited in order to protect the view.

#### 4. Telecommunication Facilities Procedural Requirements.

- a. A scaled plan in accordance with Non-Residential Site Review Regulations shall be submitted to the Planning Board including the following additional information: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent land uses (up to 200 feet away), and any other information deemed necessary by the Planning Board.
- b. Written proof that the proposed use/facility complies with FCC regulations on radio frequency (RF) exposure guidelines and the FAA regulations on tower lighting requirements shall be submitted to the Planning Board.
- c. The applicant shall submit written proof that any evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA submission of the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town's site review process, shall become part of the application requirements. The applicants shall submit copies of any EIS or EA documents no later than ten (10) days before the submission of any such documents to FCC for final approval.
- d. Each applicant for an antenna and/or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two (2) miles of the boarder thereof, including specific information about the location, height, and design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or Special Exemption Permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence shall consist of one (1) or more of the following:

- i. Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
- ii. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements and why.
- iii. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

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- iv. Substantial evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
  - v. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - vi. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
  - vii. Information on the number of sites for wireless telecommunication facilities each provider will require.
  - viii. Information on sites outside of the Town that are being considered.
  - ix. Information on how future technology may reduce or eliminate the need for tall antenna sites.
  - x. Information on how the siting of a wireless telecommunication facility will affect the ability to allow a competitor's antennas on the same property.
  - xi. Information of whether any or all of the wireless telecommunications carriers providing service to central New Hampshire use the system known as cable micro-call integrator/headed interface converter ("CMI/HIC") which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones.
  - xii. Information on whether there are any such carriers using CMI/HIC in surrounding cities and towns.
  - xiii. Information on whether it is feasible for carriers to locate base station equipment underground.
- e. The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance for co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town and grounds for a denial.



- f. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:4, I (g).
- g. Each applicant for a tower, monopole or alternative structure shall submit a design certified by a competent engineer that the structure has been engineered to accommodate the maximum number and type of all compatible telecommunication media antenna.

## 5. General Regulations.

- a. All wireless communication facilities shall require a building permit.

Additional requirements are as follows:

- i. Existing Structures.

Epsom encourages the placement of wireless communication facilities on existing towers or on existing structures so long as such placement is consistent with the purposes and standards of these regulations. A new or updated Site Plan approved by the Planning Board shall be required if a new antenna or other facilities are installed on an existing tower or on or in an existing structure, other than a street-side utility pole, so long as the height of that tower or structure is not increased. Nothing in these Ordinances prohibits the placement or construction of more than one (1) tower on the same parcel of land.

- ii. Reconstruction of Existing Structures.

Towers in existence prior to the adoption of these regulations may be reconstructed in kind with an updated Site Plan, so long as there is not increase in height, so long as the reconstruction will not result in increased visual or environmental impact, and so long as there is not expansion or substantial modification of ancillary facilities or driveways. If additional ancillary facilities are needed or if other site modifications are required, the project shall require a new Site Plan approval. If reconstruction will result in an increase in height or a significant modification of the appearance or type of tower, then a full approval as mandated for new facilities under these Ordinances shall be required.

- iii. Street-Side Utility Poles.

Street-side utility poles are those poles, which are located in or within twenty-five (25) feet of a road right-of-way. The placement of new wireless telecommunication facilities on existing street-side utility poles will require a new approval under these Ordinances. Antennas that can be incorporated into existing freestanding streetlights or utility poles shall only require Site Plan approval by the Planning Board.

iv. Construction of New Towers.

The construction of new towers for telecommunication facilities is discouraged except where and when no reasonable alternative exists, and such projects shall require a full approval as mandated under these Ordinances and must comply with the provisions of these regulations. These regulations incorporate the Epsom Town of Epsom Site Plan Regulations, to the degree those standards do not conflict with the provisions of these regulations, in which case these regulations shall prevail.

v. Regional Notification.

In accordance with the regional notification requirements of RSA 12-K:7, the applicant shall pay for notification to communities within a twenty (20) mile radius of the site when the construction of a new tower or when increasing height of an existing tower. For the purposes of these regulations, it shall always be assumed that the adjacent Towns of Allenstown, Pembroke, Chichester, Pittsfield, Northwood and Deerfield could be visually affected, and that unless specifically determined by the Planning Board to not be necessary, each of those towns will be notified by the Planning Board at the applicant's expense.

6. Dimensional Requirements.

a. Height.

It is the intent of these regulations that wireless communication facilities shall not have urbanizing effect upon the rural visual character of Epsom. For that reason, the maximum height of new wireless facilities shall not exceed twenty (20) feet above the average surrounding tree canopy height as measured within a two hundred (200) feet radii of the proposed facility location. Nor shall the height exceed ninety (90) feet.

The Planning Board shall have the authority to grant exceptions to the height limitations. The Planning Board may require a lower height than the maximum allowed if, in its judgment, such lower height is necessary at the proposed location to protect the rural and visual character of adjacent properties and the community as a whole. The Planning Board may also, on a case-by-case basis, allow any increase in height of wireless telecommunication facilities to an upper limit of one hundred ninety (190) feet, with the following restrictions:

- i. No telecommunication tower or facility shall exceed ninety (90) feet unless it is surrounded by mature trees that will be protected by easement or other means to assure dense natural screening.
- ii. The Planning Board must make written findings of fact as to why the increase in height is in the best interest of the community and why the increased height will not harm the visual quality and character of adjacent properties and the community as a whole. It is the presumption of this Ordinance that heights greater than ninety (90) feet tend to be a disruptive visual element in the Epsom landscape, and that the Planning Board will not normally allow a greater height.

b. Height on Existing Structures.

The height of existing structures may, by Site Plan approval from the Planning Board, be increased to accommodate wireless communication facilities if the facility is camouflaged, so long as the facility is, in the judgment of the Planning Board, in scale and proportion to the existing structure.

c. Antenna Types.

Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount.

A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.

d. Setback.

All wireless communication facility buildings shall meet the setback requirements of the underlying zone in which they are to be located.

e. Safety Zone.

All wireless communication facilities towers shall have a safety zone sufficient, in the judgment of the Planning Board, to protect the public and adjacent properties from either a structural collapse or from wind-blown ice. Unless the applicant provides convincing evidence to the contrary, the base of any telecommunication facility shall be set back from all property lines a distance equal to its height. The Planning Board may require a greater setback distance to address wind-blown ice.

7. Design Standard.

a. Engineering Certification.

Wireless communication facilities will require plans certified by a New Hampshire licensed structural engineer. Prior to the issuance of a Certificate of Occupancy, the Zoning Board Compliance Officer shall be provided with a written certification from a qualified New Hampshire licensed engineer, at the expense of the applicant, that the facilities have been constructed and installed in accordance with the approved plans and that the facility is operating in compliance with its federal license.

b. Visual Appearance.

i. All wireless communication facilities shall be camouflaged to the greatest extent possible, using compatible building materials and colors, screening, camouflage techniques, with native species landscaping and/or placement within trees. Existing on-site vegetation shall be preserved to the maximum extent possible.

- ii. Every wireless communication facility must blend into its surroundings as much as possible. Each application for wireless communication facilities must demonstrate that there will be minimal visual impact. A photo-realistic simulation and an on-site Crane Test shall normally be required for all new towers and may be required for other new wireless communication facilities.
- iii. The color of equipment sheds should blend in with their surroundings, to be determined by the Board on a case-by-case basis. Landscaping or screening shall normally be required for equipment sheds and may be required for other components of a wireless communication facility.
- iv. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest and screens views of the facility in all directions. These trees must be existing on the subject property, planted on the site, or be within a landscape easement on an adjoining site.

The Planning Board shall have the authority to decrease, relocate or alter the required buffer based on site conditions. The one hundred fifty (150) feet for vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease.

The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

- v. Communication towers shall normally not be approved in open fields, even if disguised as flag poles. When possible, wireless communication facilities should be placed within existing buildings or structures so as to hide or camouflage them. In rural portions of the Town where existing structures may not exist for camouflaging, the placement of the towers and associated facilities within permanently wooded areas is encouraged so that native species of trees can provide natural camouflage.

The Town shall require some form of easement or some other means of assuring that an adequate buffer of trees is maintained until the tower is removed. Facilities shall not be located within two hundred (200) feet of a crest, ridge line, or summit, except that the Planning Board may allow sitting in a minor crest or ridge line if the Board concludes that such sitting will have minimal off-site visual impact and will otherwise meet the purposes of this Ordinance.

- vi. Any telecommunications facility located on or within a historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building. Any alternations made to accommodate wireless communication facilities within or on a historic structure must be fully reversible unless otherwise approved by the Planning Board.

c. Equipment Shelters.

Whenever possible, equipment shall be located within existing structures or in underground vaults. When required to be above ground, equipment shelters shall be of materials and colors that blend into the surrounding landscape, and shall be screened, unless otherwise approved by the Planning Board, behind an effective year-round buffer equal to the height of the proposed building.

d. Lighting.

Wireless communication towers and antennas shall not be lighted, except as specifically required by the Federal Aviation Administration (FAA). Lighting of equipment structures or other associated facilities is discouraged and shall not be visible beyond the property line. All utility wiring to the facility shall be underground, unless otherwise approved by the Planning Board.

e. Signage.

Signage shall be limited to an identification of the property and owner and warning of dangers. All signage must comply with the Town's sign regulations.

f. Security Fencing.

Unless otherwise specified by the Planning Board, fencing shall be provided to prevent access, except by authorized personnel. This will normally be a locked wall fence, or berm that completely seals off the facility from unauthorized entry or trespass. The appearance of this fencing should blend into the existing setting of the site. Silver-colored galvanized fencing will not normally be accepted.

g. Emissions.

- i. All wireless communication facilities must comply with the Radio Frequency Radiation (RFR) standards of the Federal Communications Commission (FCC), and the Town may require periodic inspections by a qualified engineer, at the applicant's expense, to assure compliance with FCC guidelines.
- ii. No antenna will be permitted in a location where it will interfere with existing transmittal or reception of radio, television, audio, video, electronic, microwave or other signals.
- iii. The applicant must specifically demonstrate to the satisfaction of the Town that the proposed emissions will not interfere with Town's Communications (Police, Fire and Public Works).

h. Federal Requirements.

All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations with six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

i. Building Codes-Safety Standards.

To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to person or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within thirty (30) days, such action shall constitute abandonment and grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

j. Certification of Safety Standards and Continued Need.

The owner of a tower or antenna shall provide an annual certification to the Zoning Compliance Officer verifying compliance with building codes and safety standards. The certification shall also verify that the structure is still needed for the operation of the owner's network. Said certification shall be submitted to the Zoning Compliance Officer prior to December 31<sup>st</sup> of each year. Failure to submit an annual certification shall constitute abandonment and be grounds for removal.

8. Exemptions.

a. Government Use.

Antennas or towers owned, performing Federal, State, County or Town functions, or otherwise controlled by the respective governments shall be exempt from the requirements of this Telecommunications Facility Ordinance.

b. Amateur Radio, Receive-Only Antennas.

This Ordinance shall not govern any tower or the installation of any antenna that is less than seventy (70) feet in height and is owned and operated by a federally licensed amateur or citizens band station operator and/or is used exclusively for receive-only antennas. This Section adopts the provisions and limitations as referenced in RSA 674:16, IV.

c. Essential Services and Public Utilities.

Henceforth, from the date of adoption of this Ordinance, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the laws or Ordinances and regulations. Siting for telecommunications facilities shall be considered a use of land is addressed by this Ordinance.

9. Bonding and Security and Insurance.

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned, and the tower owner is incapable and unwilling to remove the tower. Bonding and surety shall be consistent with the provisions of the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering casualty and liability.

10. Removal of Abandoned Antennas and Towers.

Any antenna or tower that is not operated for a continuous period of twelve (12) months or is no longer needed for the operation of the network shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Zoning Compliance Officer notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two (2) or more users of a single tower, this provision shall not become effective users cease using the tower.

S. Kennels and Animal Boarding Facilities.

Kennels and animal boarding facilities shall be permitted in all zones, subject to a Site Plan review approval and so long as such facilities operate humanely and in sanitary conditions consistent with all current applicable laws and regulations. Such facilities may not operate so as to create a public or private nuisance.

## T. Small Wind Energy Systems.

### 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 one (1) 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.

### 2. Definitions.

- a. **Blade Height**. The vertical distance from ground level to the tip of the wind generator blade when it is at its lowest point.
- b. **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 for either 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.
- c. **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.
- d. **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.
- e. **Power Grid**. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.
- f. **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.
- g. **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.
- h. **System Height**. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



- i. **Tower**. The monopole, guyed monopole or lattice structure that supports a wind generator.
- j. **Tower Height**. The height above grade of the fixed portion of the tower, excluding the wind generator.
- k. **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.

### 3. Procedures 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 or met tower shall be erected, constructed, or installed without first receiving a building permit from the Zoning Compliance Officer.

#### b. Application.

Applications submitted to the Zoning Compliance Officer shall contain a Site Plan with the following information:

- i. Property lines and physical dimensions of the applicant's property.
- ii. Location, dimensions, and types of existing major structures on the property.
- 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 right-of-way of any public road that is contiguous with the property.
- viii. Any overhead utility lines.
- 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 a 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.

c. Abutter and Regional Notification.

In accordance with RSA 674:66, the Zoning Compliance Officer 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 Zoning Compliance Officer prior to the issuance of the building permit. The Zoning Compliance Officer shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Zoning Compliance Officer shall follow the procedures set forth in RSA 36:57, IV.

d. Application for temporary Met Towers shall provide the following information.

- i.. Location on property,
- ii. Estimated time to be in place,
- iii. Tower description, and
- iv. Abutter list.

4. Standard.

a. The Zoning Compliance Officer shall evaluate the application for compliance with the following standards:

i. Setbacks.

The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

**Minimum Setback Requirements**

| Occupied Buildings on Participating Landowner Property | Minimum Setback Requirements | Property Lines of Abutting Property and Utility Lines | Public Roads |
|--|------------------------------|---|--------------|
| 0  | 1.5                          | 1.1   | 1.5          |

aa. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

bb. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

ii. 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.

iii. Blade.

The minimum blade height shall be no less than 18 feet.

iv. Sound Level.

The small wind energy system shall not exceed 60 decibels using the A scale (dba), as measured at the site property line, except during short-term events such as severe windstorms and utility outages.

v. 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.

vi. Signs.

All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

vii. Code Compliance.

The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

viii. Aviation.

The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations, including but not limited to, Title 14 of the Code of Federal Regulations (14CFR) 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 424:5.

ix. 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.

- aa. 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, except when the financial costs are prohibitive.
- bb. 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.
- cc. 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.

x. 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 Underwriters Laboratories (UL), or a similar list approved by the state of New Hampshire, if available.

xi. 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.

xii. 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.

xiii. 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.

xiv. Foundation.

The tower's foundation shall be constructed according to the manufacturer's recommendation or as designed by a New Hampshire licensed professional engineer.

xv. Batteries.

Any battery installation shall be inspected by the fire department for safety prior to use.

5. Abandonment.

- a. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the zoning compliance offices by certified US mail of the proposed date of abandonment or discontinuation of operation.
- b. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within ninety (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 Zoning Compliance Officer. "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 twelve (12) months of inoperability, the Zoning Compliance Officer

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 thirty (30) days from Notice receipt date. After review of the information provided by the owner, the Zoning Compliance Officer 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 zoning compliance officer 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 zoning compliance office, 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 with three (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 zoning compliance office may pursue legal action to have the small wind energy system removed at the owner's expense.

#### 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.

#### 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 allowed by the RSA 676:17.

## ARTICLE IV FLOOD PLAIN DEVELOPMENT

In Accordance with the Minimum Requirements of Section 60.3(d) of the National Flood Insurance Program Regulations

### A. General Provisions.

This Ordinance adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Epsom Floodplain Development Ordinance. The regulations in this Ordinance shall overlay and supplement the regulations in the Town of Epsom Zoning Ordinance and shall be considered part of the Zoning Ordinance for 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 Merrimack, New Hampshire”, dated April 19, 2010, together with the associated Flood Insurance Rate Maps dated April 19, 2010, which are declared to be a part of this Ordinance and are hereby incorporated by reference.

### B. Statement of Purpose.

The purpose of this Article is to minimize public losses due to flood conditions in specific areas by:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, heights, or velocities.
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers which help accommodate or channel flood waters.
4. Controlling filling, grading, dredging, and other developments which may increase flood damage.
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards in other areas.

### C. Definition of Terms.

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 Epsom.

1. **Area of Special Flood Hazard** is the land in the floodplain within the Town subject to a one percent (1%) or greater chance of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.
2. **Accessory Structure** means a small, detached structure that is incidental and insubordinate to the principal structure.
3. **Base Flood** means a flood having a one percent (1%) chance of being equaled or exceeded in any given year.
4. **Basement** means any area of a building having its floor subgrade on all sides.
5. **Building** – see *Structure*.
6. **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 operation or storage of equipment or materials.
7. **FEMA** means the Federal Emergency Management Agency.
8. **Flood or Flooding** means a general and temporary condition of partial or complete inundation of normally dry land area from:
  - a. the overflow of inland or tidal waters.
  - b. the unusual and rapid accumulation or runoff of surface waters from any source.
9. **Flood Elevation Study** means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.
10. **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.
11. **Flood Insurance Study** – see *Flood Elevation Study*.
12. **Floodplain or Flood-Prone Area** means any land area susceptible to being inundated by water from any source (see definition of “Flooding”).



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13. **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.
14. **Floodway** – see “Regulatory Floodway.”
15. **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.
16. **Highest Adjacent Grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
17. **Historic Structure** means any structure that is:
- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the 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 contribution 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.
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - i. By an approved state program as determined by the Secretary of the Interior, or
    - ii. Directly by the Secretary of the Interior in states without approved programs.
18. **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 lower 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.
19. **Manufactured Home** means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) days. This includes manufactured homes located in a manufactured home park or subdivision.

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20. **Manufactured Home Park or Subdivision** means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.
21. **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.
22. **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. The 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.
23. **100-Year Flood** – see **Base Flood**.
24. **Recreational Vehicle** is defined as:
- a. built on a single chassis,
  - b. four hundred (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.
25. **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.
26. **Special Flood Hazard Area** means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on a FIRM as Zone A, AO, AH, A1-A30, AE, A99, AR, AR/AE, AR/AO, AR-A1-30, AR/A, V, VE, or V1-V30. (See – "Area of Special Flood Hazard").
27. **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.

28. ***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 one hundred eighty (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 pikes, the construction of columns, or any work beyond the state of excavation; or the placement of 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 or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.
29. ***Substantial Damage*** means damages of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
30. ***Substantial Improvement*** means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal:
- a. the appraised value prior to the start of the initial repair or improvement, or
  - b. in the cause 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”.

31. ***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 Article IV, Sections D.3.a.iii; D.3.a.iv; D.3.d; D.3.e.ii.bb; or is presumed to be in violation until such times as that documentation is provided.
32. ***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.

#### D. Administration.

##### 1. Establishment of Development Permit.

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard. Application for a Development Permit shall be made on forms furnished by the Selectmen.

##### 2. Designation of the Selectmen/Zoning Compliance Officer (ZCO).

The Selectmen/ZCO is hereby appointed to administer and implement this Ordinance by granting or denying Development Permit applications in accordance with its provisions.

##### 3. Duties and Responsibilities of the Selectmen/ZCO.

The duties of the Selectmen/ZCO shall include, but not be limited to:

- a. Review Permit Applications.
  - i. Review all Development Permits to determine that the permit requirements of this Ordinance have been satisfied.
  - ii. Review all Development Permits to determine 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.
  - iii. Review, prior to issuing building permits, all Development Permits to insure that along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other developments are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Selectmen/ZCO shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meet the floodway requirements of this Section.
  - iv. Review, prior to issuing building permits, all Development Permits to insure that until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood at any point within the community.

b. Review Permit Applications.

The Selectmen/ZCO 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 damage, and
  - 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.
- c. Review Location of Water and Septic 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 Selectmen/ZCO with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the system 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.

- d. Ensure that applicants for Development Permits for all new or substantially improved structures located in Zones A, and AE, furnish the following information to the Selectmen/ZCO:
- i. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement,
  - ii. if the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed, and
  - iii. any certification of flood proofing.

The Selectmen/ZCO shall maintain for public inspection and shall furnish such information upon request.

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- e. Determine flood elevation and maintain the following general requirements:
- i. In special flood hazard areas, the Selectmen/ZCO shall determine the 100-year flood elevation in the following order of precedence according to the data available:
    - aa. In Zones AE refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
    - bb. In Zone A, the Selectmen/ZCO 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 approval).
  - ii. Selectmen/ZCO's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that:
    - aa. all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.
    - bb. all new construction or substantial improvements 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 flood-proofed 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 that 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.
    - cc. 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 base flood level; 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.

- dd. for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
  - (i.) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage,
  - (ii.) the area is not a basement, and
  - (iii.) 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 (2) openings having a total net area of not less than one (1) 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 (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- ee. no encroachments, including fill, new construction, substantial improvements, and other development shall result in any net increase of flood elevation in a special flood hazard area and a net decrease of flood elevation is encouraged.
- ff. the applicant shall submit to the Selectmen/ZCO certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- gg. maintained for public inspection all records pertaining to the provisions of this Ordinance.
- f. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Selectmen/ZCO, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Selectmen/ZCO, including notice of all scheduled hearings before the Wetlands Bureau.

#### 4. Recreational Vehicles within Zones A and A/E

All recreational vehicles placed on sites within Zones A and AE shall either:

- a. be on the site for fewer than one hundred eighty (180) consecutive days,
- b. be fully licensed and ready for highway use, or

- c. meets 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.

## 5. Exemptions.

Accessory Structures, as defined in Section C, located within Zones A or AE, shall be exempt from the elevation criteria required in Section D.3.e.ii,aa, above, of all other requirements of Section D, if all the following requirements are met. Accessory Structures shall:

- a. be 150 square feet or less,
- b. have unfinished interiors and not be used for human habitation,
- c. have hydraulic openings in at least two (2) different walls of the accessory structure,
- d. be firmly anchored to resist flotation, collapse, and lateral movement, which may result in damage to other structures,
- e. be located outside the floodway,
- f. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure, and
- g. have mechanical and utility equipment elevated above base flood elevation or dry flood proofed. Electrical service will have only ground fault interrupt electrical outlets. The electrical service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

## E. Variances and Appeals.

### 1. Statutory Authority.

Any order, requirement, decision or determination of the Selectmen/ZCO made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

### 2. Additional Requirements for Variance upon Appeal.

If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, the applicant shall have the burden of showing in addition to the usual variance standards under state law:

- 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. Zoning Board of Adjustment Notification to Applicant.

The Zoning Board of Adjustment shall notify the applicant in writing that:

- a. 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 twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
- b. such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

### 4. Records and Reporting.

The community shall:

- a. maintain a record of all variance actions, including their justification for their issuance; and
- b. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

### 5. Additional Considerations.

The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Ordinance, in accordance with Article VI.E.4.a, while observing the additional considerations for Floodplains contained in Article IV.E.2.

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**ARTICLE V BOARD OF ADJUSTMENT****A. Appointments.**

The Board of Selectmen shall appoint a Zoning Board of Adjustment as provided under New Hampshire law; and shall appoint up to five (5) persons to serve as alternates as the need may arise.

**B. Appeals.**

Any person aggrieved by any decision under the Ordinance made by any administrative officer of the Town may appeal to the Zoning Board of Adjustment as provided in RSA 676:5.

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## ARTICLE VI ADMINISTRATION AND ENFORCEMENT

### A. Zoning Compliance Permit.

#### 1. Written Application.

Written application for a Zoning Compliance Permit must be filed by the owner, or his agent, or lessee with written consent of the owner. Until a Zoning Compliance Permit has been obtained from the Zoning Compliance Officer, none of the following shall be commenced:

- a. The erection or use of any new building, exterior sign, other structure, or addition to any existing building or structure.
- b. Any use of premises, which is not provided for in this Ordinance, including, but not limited to, a change in the nature of the use of any building or premises to a non-conforming use for any lawful prior use, the expansion of any existing lawful non-conforming use, or any change in lot size or shape which would result in a violation of area or dimensional requirements.

#### 2. Application for a Zoning Compliance Permit.

Application for a Zoning Compliance Permit shall be upon an appropriate form to be prescribed by the Town and shall be accompanied by:

- a. Plans, drawn to scale, showing the actual shape, dimensions, and location of the lot to be used, of existing buildings upon it, of alterations proposed for existing buildings, and of proposed new buildings.
- b. Information as to the existing and extended use of each building, lot, or part thereof, as to the number of families, lodgers, or other occupants which any building upon the premises is designed to accommodate.

#### 3. Review of Zoning Compliance Permit.

The Zoning Compliance Officer shall determine whether an application for permit is in compliance with a permitted use as defined in the Ordinance. If the Zoning Compliance Officer determines that it is, the application for permit shall be approved and the Zoning Compliance Officer shall act upon any application within thirty (30) days after it has been filed.

#### 4. Issuance of a Zoning Compliance Permit.

Issuance of a Zoning Compliance Permit pursuant to this Ordinance constitutes approval by the Town of the proposed use only under the requirements of this Zoning Ordinance.

#### 5. Certificate of Compliance Requirement.

The Zoning Compliance Officer shall not issue a Zoning Compliance Permit until the applicant has received a Certificate of Compliance in accordance with the New Hampshire Energy Code from the Governor's Council on Energy.

#### 6. Expiration and Extension of Permit.

A Zoning Compliance Permit shall become void if construction is not begun within twelve (12) months from the date of issuance. Permits may be extended once for no more than an additional twelve (12) months by the Zoning Compliance Officer on receipt of a written request for extension at least fourteen (14) days prior to the expiration of the original permit.

#### 7. Transfer of Permit.

No Zoning Compliance Permit issued shall be transferable to a subsequent owner.

#### 8. Zoning Compliance Permit Issue Date

On approval by the Board of Adjustment of a variance or special exception, the Zoning Compliance Officer shall issue a Zoning Compliance Permit as of the date of approval of the Board.

### B. Certificates of Occupancy.

#### 1. Unlawful Occupancy.

It shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this regulation, until a Certificate of Occupancy is issued by the Zoning Compliance Officer stating that the proposed use of the structure or land conforms to the requirements of these regulations. A Certificate of Occupancy shall not be needed for the normal repair or redecorating of structures.

#### 2. Application Submission.

Applications for a Certificate of Occupancy shall be made to the Zoning Compliance Officer on forms provided by them for that purpose, by the owner, his agent, or lessee.

#### 3. Zoning Compliance Officer Review of Use.

Prior to the issuance of any Certificate of Occupancy, the Zoning Compliance Officer shall ensure that the proposed use of the structure or land conforms to the requirements of the Zoning Ordinances.

#### 4. Fee.

The fee for a Certificate of Occupancy shall be established by the Selectmen. Said fee shall accompany each application for a Certificate of Occupancy.

### C. Zoning Compliance Officer.

#### 1. Description.

The administrative and enforcement officer for this Ordinance shall be known as the Zoning Compliance Officer who shall be appointed by the Board of Selectmen. The Zoning Compliance Officer shall administer the Zoning Ordinance literally and shall not have the power to permit any use of and/or buildings which is not in conformance with this Ordinance.

#### 2. Authority.

The Zoning Compliance Officer may withhold the issuance of a Zoning Compliance Permit or a Certificate of Occupancy when he/she determines that the issuance of such permit is contrary to the public good or against the general welfare. The determination of the Zoning Compliance Officer may be appealed to the Zoning Board of Adjustment as provided under New Hampshire law.

### D. Enforcement and Penalty.

1. This Ordinance shall be enforced by the Zoning Compliance Officer if any building or use of land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or use in violation of this Ordinance. The Zoning Compliance Officer shall institute, in the name of the Town, any appropriate action, injunction, or other proceeding to prevent in or about the premises any act, conduct, business, or use constituting a violation.
2.
  - a. No owner of any land, or any person managing or controlling any land may allow or cause the use of any land contrary to the provisions of these Ordinances; nor in violation of any conditions imposed by the Planning Board or Epsom Zoning Board of Adjustment.
  - b. No person may put any land to any use contrary to the provisions of these Ordinances; or in violation of any conditions imposed by the Planning Board or Epsom Zoning Board of Adjustment.
  - c. An exemption or exception from the restrictions, requirements or provisions of these Ordinances shall be an affirmative defense.
  - d. A person who violates any provision of these Ordinances may be fined up to the limits allowed by RSA 676.

## E. Board of Adjustment.

### 1. Statutory Authority.

There shall be a Board of Adjustment as provided by the statutes (RSA 673:1, IV) of the State of New Hampshire, whose members and alternates shall be appointed by the Board of Selectmen.

### 2. Powers of the Board.

The Board of Adjustment shall have the following powers, as well as any other power conferred upon such Board by the Statutes of the State of New Hampshire:

- a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Compliance Officer in enforcement of this Ordinance.
- b. To hear and decide special exceptions to the terms of this Ordinance.
- c. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed, and substantial justice done. In so doing, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and community.
- d. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the powers granted to it under RSA 674:33, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the Zoning Compliance Officer from whom the appeal is taken.
- e. The concurring vote of three (3) members of the Board shall be necessary to reverse any action of the Zoning Compliance Officer or to decide in favor of the applicant on any matter with which the Board is required to pass under this Ordinance.

### 3. Rules Governing Proceedings.

- a. All appeals and applications to the Board of Adjustment shall be in writing, on forms prescribed by that Board.
- b. Whenever a notice of appeal is filed, the Board of Adjustment shall hold a public hearing and notice shall be given as follows:



The applicant and all the abutters shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be given not less than five (5) days before the date fixed for the hearing of the appeal. A public notice of the hearing shall be placed in a newspaper of general circulation in the Town not less than five (5) days before the hearing of the appeal. The public hearing shall be held within forty-five (45) days of the receipt of the notice of appeal. Any person may appear in person or by agent or attorney at the hearing of an appeal.

The cost of advertising and mailing shall be payable by the applicant prior to the required public hearing.

The Zoning Compliance Officer, the Planning Board and the Board of Selectmen shall be notified of the public hearing and may appear and be heard. In those proceedings before the Board of Adjustment, at which the Planning Board submits its recommendations, such recommendations shall be in the same format as that used by the Board of Adjustment in reporting its decision. The Board of Adjustment shall state in writing in sufficient detail its reason for granting or denying an appeal.

- c. The Board of Adjustment shall adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board of Adjustment and the Selectmen's Office and shall be a public record.

#### 4. Variances.

- a. The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Ordinance, provided it conforms to the provisions of RSA 674:33 and if all the following criteria are determined to be true:
  - (1) The variance will not be contrary to the public interest,
  - (2) The spirit of the ordinance is observed,
  - (3) Substantial justice is done,
  - (4) The values of surrounding properties are not diminished; and
  - (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For the purpose of evaluating this criterion, the meaning of "unnecessary hardship" is either one of the following subparagraphs:
    - i. Owing to special conditions of the property that distinguish it from other properties in the area:
      - No fair and substantial relationship exists between the general-public purposes of the ordinance provision and the specific application of that provision to the property; and
      - The proposed use is a reasonable one.

- ii. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
- b. In authorizing a variance, the Board of Adjustment may attach such conditions and safeguards, as it deems necessary to protect the neighborhood and the community. See 9, below.

## 5. Special Exceptions.

- a. The Zoning Board of Adjustment shall have the power to hear and decide on application for special exceptions as specifically granted by this Ordinance. In applying for a special exception, the applicant need not demonstrate hardship since the basis for the action is of general benefit to the Town as a whole. In granting a special exception, the Board with due regard to the nature and condition of all adjacent land, structures and uses, shall find all the following general conditions to be fulfilled:
  - i. A complete plan for the proposed development shall be submitted with the application showing location of all buildings, parking areas, access, open space, landscaping and any other pertinent information.
  - ii. The requested use is essential or desirable to the public convenience and general welfare.
  - iii. The requested use will not impair the integrity or character of the immediate area or adjoining areas.
  - iv. That the specific site is an appropriate location for the proposed use and the proposed use will not be detrimental to the health, morals, or general welfare of the immediate or adjoining areas.
  - v. That no factual evidence is found that property value in the area will be adversely affected by such use.
  - vi. That no undue traffic, nuisance, or unreasonable hazard will result.
  - vii. That adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.
  - viii. That all valid objections presented at the public hearing are given full consideration.
  - ix. That the proposed use has an adequate water supply and sewage system and meets all applicable requirements of the State.

## 6. Other Requirements.

The granting of any appeal by the Board shall not exempt the applicant from any portion of this Ordinance not specifically ruled upon by the Board or specifically set forth as exception in this particular case from a provision of this Ordinance. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use, increase the intensity of use, or extend or displace the use of any building, other structure, or lot, or change any required limitations or special conditions imposed by the Board in authorizing a special exception or variance without appealing to the Board as a new case over which the Board shall have complete administrative power to deny, approve or modify.

## 7. Public Hearing.

The Board shall within forty-five (45) days hold the hearing of an appeal and before any hearing is given either on an appeal or an application for variance or special exception of the Zoning Ordinance, notice shall be given to all the abutting owners or their representatives of interest as recorded in the office by the Board of Selectmen, either in hand or by notice sent by registered mail and also notice in a newspaper of general circulation. Said notice shall be sent or delivered in hand and published at least five (5) calendar days before the date and time of meeting. If the notices are sent by mail, they shall be mailed to the last known address of the abutting owners or representatives of interest if on record aforesaid.

The costs of notices shall be paid by the appellant or applicant to the Board. Said costs shall be paid before the notices can be sent and placed in the paper and action taken by the Board on any appeal or application for variance or special exception.

## 8. Decisions.

In accordance with RSA 676:3 I, following public hearing of an appeal, the Board's decision shall be made available for public inspection within five (5) business days of such vote. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval. Additionally, the applicant, owner of the property, Selectmen, Planning Board and Zoning Compliance Officer shall be notified of the decision.

## 9. Fees.

The fee for any permit issued under this Ordinance shall be established by the Board of Selectmen.

#### F. Driveways.

A driveway permit shall be issued by the Road Agent before any new use or expanded use which utilizes any Town road, excluding state highways. A driveway permit shall be obtained before any construction of any driveway. Decisions regarding issuance of a driveway permit, by the Road Agent, shall be appealable to the Planning Board in accordance with the public hearing procedure. A single driveway may service more than a single lot only if:

1. sufficient evidence is presented to assure that the driveway will remain open and adequately maintained for use by each lot to be served, as well as, all emergency vehicles, and
2. the proposed driveway is consistent with the general character and appearance of its surroundings.

**ARTICLE VII CONFLICTING PROVISIONS**

When the regulations made under the authority hereof differ from those prescribed by any statute, Ordinance or other regulations, the provision which imposes the greater restriction or higher standard shall govern.

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## ARTICLE VIII SEXUALLY ORIENTED BUSINESSES

### A. Purpose and Intent.

It is the purpose of this Article to establish reasonable and uniform regulations to prevent the concentration of sexually orientated businesses within the Town of Epsom; and it is the intent to promote the health, safety and general welfare of the citizens of the Town; and it is the intent of this Article that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually orientated businesses; and the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.

### B. Definitions of Sexually Oriented Business.

A sexually oriented business is any place of business at which any of the following activities is conducted:

#### 1. Adult Bookstore or Adult Video Store.

A business that devotes more than fifteen percent (15%) of the total displace, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videos cassettes, slides, tapes, records, CD-ROMS other forms of visual or audio representations which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1; or
- b. Instruments, devises or paraphernalia which are designed for use in connection with “sexual conduct” as defined in RSA 571-B:1, other than birth control devises. **AN ADULT BOOKSTORE OR ADULT VIDEO STORE DOES NOT INCLUDE AN ESTABLISHMENT THAT SELLS BOOKS OR PERIODICALS AS AN INCIDENTAL OR ACCESSORY PART OF ITS PRINCIPAL STOCK AND TRADE AND DOES NOT DEVOTE MORE THAN FIFTEEN PERCENT (15%) OF THE TOTAL FLOOR AREA OF THE ESTABLISHMENT TO THE SALE OF BOOKS AND PERIODICALS.**

## 2. Adult Motion Picture Theater.

An establishment with a capacity of five (5) or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1, for observation by patrons. For subsections c, d, e, f, and g, a “substantial portion of the total presentation time” shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any thirty (30) consecutive day period.

## 3. Adult Motion Picture Arcade.

Any place to which the public is permitted or invited wherein coin or slug- operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

## 4. Adult Drive-In Theater.

An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

## 5. Adult Cabaret.

A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1 and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.



## 6. Adult Motel

A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television, transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

## 7. Adult Theater.

A theater, concert hall, auditorium, or similar establishment either indoor or outdoor in nature, which for any form of consideration regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

## C. Allowed Locations and Location Restrictions of Sexually Oriented Businesses.

1. Sexually oriented businesses, as defined above shall be permitted only in the Residential/Commercial (R/C) Zone by special exception, provided that all other regulations, requirements, and restrictions for the zone in which the sexually oriented business is to be located are met, and no sexually oriented business shall be permitted within fifteen hundred (1500) feet of another existing sexually oriented business or one for which a building permit has been applied for.
2. No sexually oriented business shall be permitted within seven hundred fifty (750) feet of any residence, apartment, or manufactured housing.
3. No sexually oriented business shall be permitted within seven hundred fifty (750) feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, state approved day care center or public sports/recreation parks, and no sexually oriented business shall be permitted within seven hundred fifty (750) feet of the Town boundaries.
4. No sexually oriented business shall be permitted within fifteen hundred (1500) feet of another existing sexually oriented business on the date of the passage of this amendment; and no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined in Article VIII, Section B.

## D. Measure of Distance.

The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures from the closest exterior structural wall or temporary or permanent physical divider between each business.

E. Additional Reasonable Regulations.

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics in the Town of Epsom Site Plan Regulations and to avoid site development layout which may result in negative environmental impacts.

F. Special Exception Required.

Every sexually oriented business as defined under this Ordinance, proposed to be operated, constructed, or erected with the R/C Zone and meeting the further restrictions imposed under this Ordinance shall require a special exception from the Epsom Zoning Board of Adjustment.

G. Severability.

The invalidity of any Section or provision of this Article shall not invalidate any other Section or provision thereof.

**ARTICLE IX AMENDMENT**

The provisions of this Ordinance may be amended or changed at any special Town Meeting by a majority of the voters present as provided by public law.

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**ARTICLE X EFFECTIVE**

A. This Ordinance shall take effect upon its passage.

B. Severability.

Should any Section, part, portion or Article of these Ordinances be deemed illegal, unconstitutional or otherwise unenforceable by a court or tribunal of competent jurisdiction, all other parts, portions, Sections or Articles shall be severed and thereby remain in full force and effect.

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## ARTICLE XI GROWTH MANAGEMENT

### A. Authority.

This Section of the Zoning Ordinance is enacted in accordance with RSA 674:22.

### B. Purpose.

The purpose of the Growth Management Article of the Zoning Ordinance is as follows:

1. Manage orderly growth in Epsom in coordination with the Master Plan and Capital Improvements Program.
2. Determine, monitor, evaluate and establish a rate of residential growth in the Town that does not unreasonably interfere with the Town's capacity for planned, orderly, and reasonable expansion of its services to accommodate such growth.
3. Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth to allow the Town time to correct any deficiencies that have developed.

### C. Findings.

The Town hereby finds that:

#### 1. Population.

Epsom's population grew from 4,021 in 2000 (U.S. Census) to 4,680 in 2015 (NH Office of Energy & Planning estimate), an increase of 659 or 16.4% over the sixteen (16) year period.

#### 2. Building Permits.

The number of residential building permits issued in Epsom has been relatively steady since 2010. There were eighteen (18) permits issued in 2010, fifteen (15) issued in 2011, twelve (12) issued in 2012, fourteen (14) issued in 2013, thirteen (13) issued in 2014, eighteen (18) issued in 2015, and seven (7) issued in 2016. In comparison fifty-two (52) were issued in 2000 and fifty-seven (57) were issued in 2001.

#### 3. Master Plan.

The 2010 Epsom Master Plan Update contains the following recommendation: *Continue to monitor population growth to ensure that the Town is growing in proportion to abutting communities and consider extending the Growth Management Ordinance at Town Meeting.*

#### 4. Operating Expenditures.

Municipal operating expenditures increased from \$1,349,045 to \$3,205,316 between 2000 and 2015. This was an increase of \$1,856,271 or 137% over the period. Annual school expenditures increased by \$4,761,495 over the same period, from \$4,275,236 to \$9,036,731.

#### 5. School.

According to the *Feasibility Study for Epsom Central School*, the school “is presently utilized beyond its functional capacity.” Additionally, “most ‘core’ spaces are overcrowded, and some have been eliminated to accommodate the increased number of students and teaching methodology.”

#### D. Application.

1. This Section applies to building permits for new residential dwelling units, as well as repair, replacement, reconstruction, or alteration of any existing seasonal dwelling units if the proposed work will convert the unit for year-round occupation.
2. This Ordinance does not apply to non-residential building permits for expansion or alteration of existing year-round residential units and their ancillary structures.
3. For the purpose of this Ordinance, one (1) building permit shall be required for each dwelling unit (e.g., one permit for a single-family home, two permits for a duplex, etc.)

#### E. Indicators of Growth Impact.

The Town of Epsom hereby determines that the presence of any of the following conditions constitutes an indicator of growth. Abutting communities are Allenstown, Chichester, Deerfield, Northwood, Pembroke and Pittsfield.

1. The annual percent increase in building permits for dwelling units in Epsom for the past calendar year exceeds the same combined average of the six (6) abutting communities.
2. The number of public students enrolled or projected for the coming year at the Epsom Central School exceeds ninety percent (90%) of its stated capacity as stated by the Epsom School Board.
3. The annual full value tax rate of Epsom, as reported by the New Hampshire Department of Revenue Administration, exceeds the combined average rate of the six (6) abutting communities for the most recent reporting year.
4. The number of dwelling units of all projects combined for which approval is being sought and the plans have been accepted by the Planning Board, at any time of reporting, if approved could result in conditions defined by either Section E.1, 2, or 3, above.



## F. Administration.

### 1. Data.

The baseline data for developing housing unit counts in Epsom and in the six (6) abutting communities in the 2000 U.S. Census Summary Tape File 1. Building permits issued by each community are to be used in the Planning Board's annual reporting as described in Section F.2, below.

### 2. Annual Reporting.

The Planning Board at its first regular February meeting each year will report on the number of building permits issued for the previous calendar year for all residential dwelling units in Epsom and the six (6) abutting communities. In addition, the Planning Board will report on the overall annual average percent increase in residential dwelling units (based upon building permits issued) for the six (6) abutting communities, as well as Epsom, for the previous calendar year. The Planning Board shall also prepare the analysis of building permit data as required in Section H.1, below.

In addition, the Planning Board shall report on the status, as appropriate, of any permit limitations currently in place.

All reports prepared by the Planning Board relative to growth management shall remain on file at the Town Office for as long as the reports are in effect.

### 3. Indicator of Growth Declaration.

The planning Board may, at any time, issue an Indicator of Growth Declaration if it has determined that any of the conditions in Section E exist. In the case of this determination, the Planning Board shall make appropriate findings of fact and notify the Board of Selectmen, the Zoning Compliance Officer, and the general public of that finding by posting a notice in two (2) public places and publishing the notice in a newspaper of general circulation in Epsom.

### 4. Interim Permit Limitation.

Once an Indicator of Growth Declaration is issued, no building permits as described in Sections D.1, D.2, and D.3, may be approved by the Zoning Compliance Officer until after the hearing in Section G.1, is held and a decision is issued by the Planning Board, as described in Section G.2, below.

## G. Procedures for Permit Limitations.

Following an Indicator of Growth Declaration and formal notification of the declaration as described in Section F.3, the following procedures will be observed:

### 1. Notice of Permit Limitation.

The Planning Board will publish a Notice of Permit Limitation that delineates the number of permits that will be allowed as calculated in Section H.1. This notice may be combined with the Indicator of Growth Declaration. The Notice of Permit Limitation will also describe the date and location of a public hearing to seek input from the general public. All notices shall be in conformity with the requirements of RSA 675:7.

### 2. Determination of Action.

After the public hearing in Section G.1, the Planning Board shall deliberate and decide whether the Notice of Permit Limitation should be confirmed or not confirmed and issue its decision. Any decision shall be issued within fifteen (15) days of the issuance of a Notice of Permit Limitation. A confirmed Notice of Permit Limitation shall remain in effect until rescinded by the Planning Board.

### 3. Annual Review.

The operation of this Article shall be reviewed by the Planning Board at its first regular February meeting each year to ensure that the annual maximum growth rate has not become inconsistent with Epsom's responsibility and capability of planning, developing and implements the necessary municipal systems and facilities to serve the growing Town and to insure that Epsom is assuming its fair share of housing growth.

If it is deemed by the Planning Board that a Notice of Permit Limitation shall be rescinded, the Planning Board shall prepare a Declaration of Growth Indicator, provide appropriate notice of such finding, hold a public hearing and issue a decision following the same process as outlined in Sections G.1, G.2, and H.3.

## H. Equitable Allocation of Available Permits.

### 1. Allowable Number of Permits

Upon publishing a Notice of Permit Limitation and its confirmation by the Planning Board, the number of building permits available for the calendar year for the Town of Epsom shall be determined by multiplying the previous year's overall average percent increase in building permits in the six (6) towns abutting the Town by the Town's housing unit base at the conclusion of the immediate past calendar year. This number shall be rounded up to the next whole number.

The allowable number of building permits available per year shall not be greater than either:

- a. the average number of permits issued in Epsom over the previous five (5) years, or
- b. the average number of permits issued in the six (6) abutting towns over the previous five (5) years.

All numbers shall be rounded up to the next whole number.

## 2. Distribution of Permits.

To ensure equitable distribution of available permits, no partnership, corporation, or other legal entity or its related or affiliated entities, or in the case of real persons, their immediate relatives or persons associated in business, may receive more than twenty percent (20%) of the permits, or permits for seven (7) units whichever is less, available during any given calendar year.

## 3. Approved Lots.

In order to be complete, building permit applications must be for lots approved by the Planning Board and registered in the Merrimack County Registry of Deeds. Lots must meet all applicable state and local regulations.

## 4. Percentage of Available Permits.

Twenty percent (20%) of the available permits shall be reserved for owners of single lots, that are not part of a subdivision of three (3) lots or more and are not created within one (1) year from the date of the building permit application.

## 5. Expiration of Permits.

Permits issued shall lapse and be returned to the pool of available permits if construction on the dwelling has not begun within one (1) year. Site preparation work shall not be considered construction. The validity of a permit issued under this paragraph may be renewed in the same manner and under the same terms defined in Article VI.A.6.

## 6. Permit Availability.

In the event that more permits are requested than are available, the earlier application shall prevail based upon the date and time of receipt of the completed application at the Town Office. The Zoning Compliance Officer may maintain a waiting list in the event that another permit becomes available during that calendar year, or it can apply to the next calendar year. The waiting list shall not extend beyond the next calendar year.

## 7. Permit Carry Forward.

In the event that any available permits for the year are not issued, they shall be carried forward and applied to only the following year's available permits. No more than fifty percent (50%) of a previous year's permits may be carried forward to the next year.

# I. Exceptions.

## 1. Elderly Housing.

Proposals for elderly housing may be excluded from this Article upon a finding by the Planning Board that the proposed project does provide such housing and provided said

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proposed housing complies in all other regards to the Epsom Zoning Ordinance and other applicable regulations.

2. Damage, Destruction, and Demolition.

In the event of damage, destruction or demolition of any dwelling, the dwelling may be rebuilt, provided that construction is started within one (1) year of its damage, destruction or demolition and construction is completed within two (2) years.

3. Planning Board Review of Permit Count.

In each September and December in a period of Notice of Permit Limitation, the Planning Board shall review the number of permits issued to date during that calendar year, determine the number of available permits and consider the issuance of additional permits (within the available permits) to applicants that had previously received their maximum number of permits as calculated in Section H.2.

J. Sunset.

This Ordinance shall expire at the Annual Town Meeting in 2022 unless re-adopted at that meeting. The Planning Board shall make recommendations as to the necessity and desirability of re-adopting this Ordinance prior to said, Annual Town Meeting.

## GLOSSARY

Certain words contained in this Ordinance shall be defined as follows:

**Accessory Building or Use:** A building or use subordinate and customarily incidental to the main building or use on the same lot.

**Accessory Dwelling Unit (ADU):** A residential living unit that is within or attached to a single-family residential dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

**Agriculture, farm, farming:** Shall have the same meaning as those contained in RSA 21:34-a, as amended on July 6, 1999 to be effective on September 4, 1999.

**Appeal:** Required in writing to amend or overturn a decision relative to enforcement of this Ordinance.

**Bed and Breakfast Facility:** Shall mean a business which offers temporary overnight accommodations and incidental limited food service to its guests. This does not include group homes, boarding houses, hotels, motels, or other places that offer public accommodations.

**Brewery:** A building or establishment for brewing beer or other malt liquors.

**Cannabis Dispensary:** A facility where cannabis products, or devices for the therapeutic and/or recreational use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale.

**Certificate of Occupancy:** Certificate indicating completion of a structure and conformance to the Zoning Ordinance for any structure. Approval required by the Zoning Compliance Officer.

**Community Water:** A water system, serving two (2) or more dwellings, which is not maintained by a municipality.

**Day Care Center:** Care of children for either a full day or any portion thereof, whether or not the service is described as day nursery, nursery school, kindergarten, child development, and day care or by any other name for which services are regularly provided for three (3) or more unrelated children.

**Dwelling:** Any structure which is designed and actually used for the purpose of human habitation and overnight accommodation by humans.

**Dwelling Unit:** One (1) room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, living, sanitary and sleeping facilities.

**Elderly Housing:** Any dwelling which is designed for, actually occupied, and used as domiciliary or residence exclusively by persons who have attained the age of 62 years.

**Home Occupation:** Use of a dwelling by the resident owner or tenant for a customary home occupation such as dressmaking, hairdressing, home day care, teaching, or the offices for real estate, insurance, engineer, doctor (other than veterinarian), dentist, architect, lawyer, or other recognized profession similar in scope and impact.

**Lot:** A parcel of land occupied or capable of being occupied for conforming land uses as permitted by this Ordinance.

**N.H. Energy Code of 1979:** The implementation of State Law RSA Chapter 155-D. “Energy Conservation in New Buildings”.

**Non-Conforming Use:** Any lawful use of a building, structure, or land existing at the effective date of the regulations but not conforming to them.

**Public Road:** A public road is a Class V road or better, maintained at the expense of the Town or State on a year-round basis.

**Residence, Dwelling:** A structure that is designed or used as a dwelling place for no more than two (2) families.

**Residence, One-Family:** A detached or free-standing residence other than a mobile home designed for and occupied by one (1) family only.

**Residence, Two-Family:** A residential building designed for or occupied by two (2) families living independently of each other in individual attached dwelling units.

**Residence, Multi-Family:** A residential building designed for three (3) or more dwelling units and/or occupied by three (3) or more families.

**Sanitary System:** Individual waste and sewage disposal system.

**Sports Facility - Indoor and Outdoor:** An indoor or outdoor areas of sports pavilions, stadiums, gymnasiums, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise or participate in athletic competition.

**Structure:** Any on-site built, or prefabricated built, building attached to the land by physical means or for the purposes of sever disposal, utility access or otherwise, designed to or actually used to accommodate any purpose to include human habitation, storage, domestic animal habitation but not to include anything less than 16 square feet.

**Travel Trailer or Tenting and Camping Trailer:** A vehicular portable structure designed to be used as a temporary dwelling.

**Yard Sales:** A sale whereby the owner or the occupant of the premises offers for sale new, used or pre-owned items. Yard sales include neighborhood yard sales. Such sale or offer for sale may be conducted and take place for up to six (6) days in any calendar year on any single lot of land. The placement of any two (2) individual items to include motor vehicles on any lot of land with the intent to sell the same or offer to sell the same shall not be construed as a yard sale but is nevertheless a permitted activity for an unlimited number of days so long as it is not in violation of any other Ordinances. Automobile dealers as defined by New Hampshire Statutes, however, may not offer for sale, display or actually sell any vehicles on any lots other than the sites approved by the Planning Board as part of a Site Plan review.

**Yard Setbacks:** Distance from nearest point of building to front, side, or rear property lines.

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**APPENDIX A: ZONING INDEX OF ACTIVITIES REQUIRING PERMITS**

**Reference List of zoning activities that require a permit or license from the Town:**

**Board of Selectmen (BOS)**  
**Board of Adjustment (BOA)**  
**Zoning Compliance Officer (ZCO)**  
**Planning Board (PB)**

|    | <b><u>Document Type</u></b>   | <b><u>Administrative Official</u></b> |
|----|---|---------------------------------------|
| a) | Junkyard Permit<br>(Salvage Permit)<br>(Special Use Permit)<br>(Site Plan Review) | BOS<br>BOA<br>PB                      |
| b) | Building Permit<br>(Zoning Compliance Permit)                                     | ZCO                                   |
| c) | Driveway Permit   | Road Agent                            |
| d) | Cluster Development<br>(Special Use Permit)                                       | PB                                    |
| e) | Planned Business Developments<br>(Special Use Permit)                             | PB                                    |
| f) | Seasonal Business Permit  | ZCO                                   |
| g) | Sign Permit (Permanent)<br>Temporary Sign Permit<br>Off Premise Sign Permit       | ZCO<br>ZCO<br>BOS                     |
| h) | Hazardous Waste Permit  | BOS                                   |
| i) | Excavation Permit   | BOS                                   |
| j) | Development Permit (Flood Plain)  | BOS & ZCO                             |
| k) | Certificate of Occupancy  | ZCO                                   |
| l) | Site Plan Review  | PB                                    |
| m) | Home Occupation Permit  | PB                                    |

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**APPENDIX B**  
**TOWN OF EPSOM**

**Manufactured Housing Park Report**

This document must be updated and filed no later than April 15<sup>th</sup> of each year.

Park Name: \_\_\_\_\_

Park Address: \_\_\_\_\_

| Lot # | Date Unit Placed | Unit Address | Make/Year | Serial Number | Owner's Name | Owner's Address |
|-------|------------------|--------------|-----------|---------------|--------------|-----------------|
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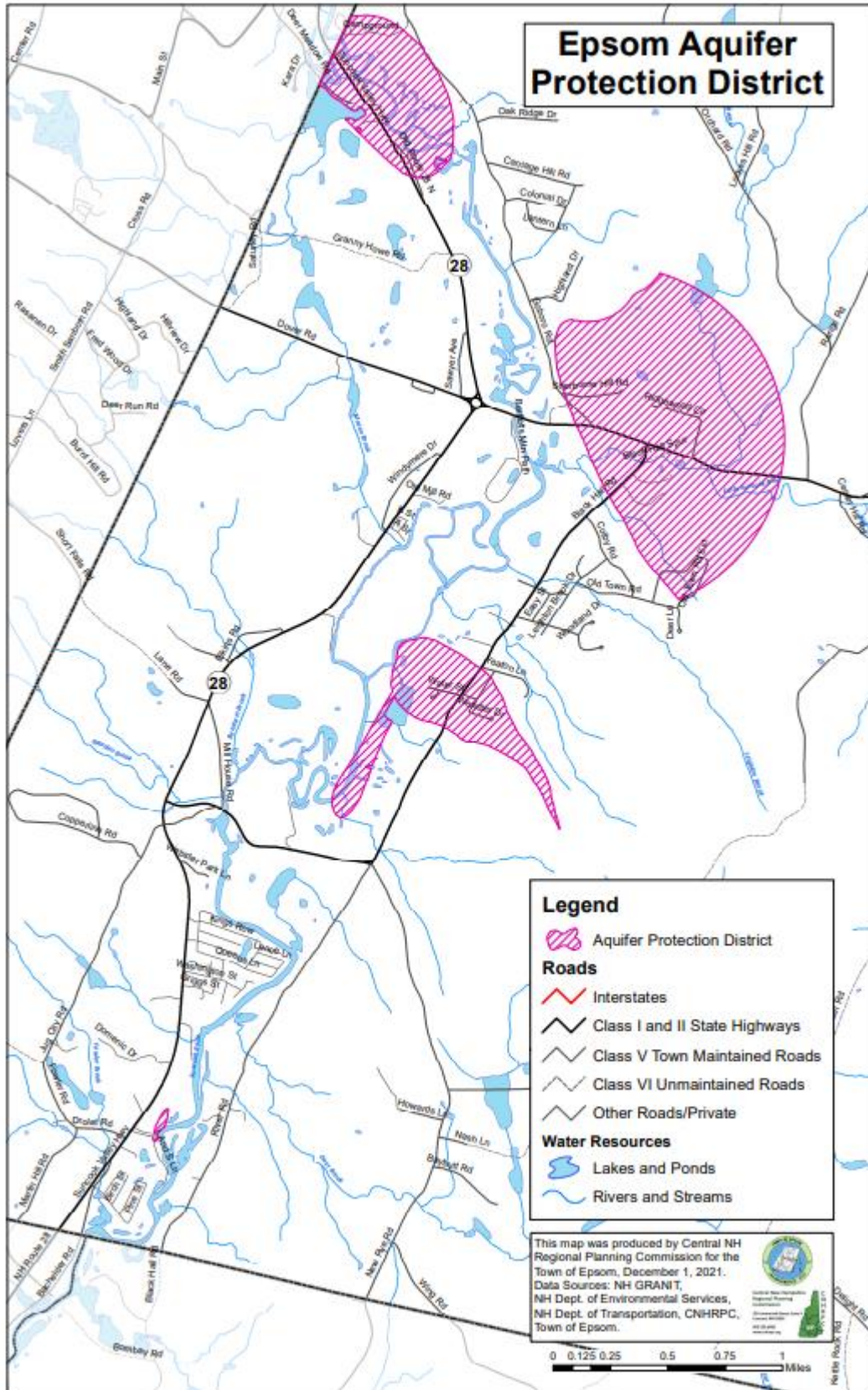
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### APPENDIX C AQUIFER PROTECTION MAP



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**SCHEDULE OF AMENDMENTS, APPROVALS, ADOPTIONS, DELETIONS & REPEALS**

| <b>Effective Date</b> | <b>Action Taken</b> | <b>Section or Article Change</b>   |
|-----------------------|---------------------|--|
| 09/15/69              | Approval            | Original Ordinance   |
| 02/1973               | Amendment           | Article III, Section B, Pre-Existing Non-Conforming lots<br>Article III, Section F, Mobile Homes<br>Article III, Section G, Minimum Lot Size   |
| 08/01/78              | Adoption            | Article IV, Flood Damage Prevention  |
| 03/11/80              | Adoption            | Article III, Section L, Special Provisions   |
| 02/06/81              | Adoption            | Article VI, Administration and Enforcement   |
| 03/08/85              | Adoption            | Article II, Section B, Residential/Commercial Zone   |
| 03/12/85              | Amendment           | Article III, Section F, Mobile Homes, Mobile Home Parks  |
| 03/10/87              | Amendments          | Article II, Section B (1), Residential/Commercial Zone (Purpose)<br>Article II, Section B (4.e), List of Principal Uses (Auto Sales)<br>Article III, Section K (3), Signs                |
| 03/14/89              | Amendment           | Article III, Section G, Residential Single and Multi-Family Resident Requirements  |
|                       | Adoptions           | Article III, Section I, Planned Business Developments<br>Article III, Section M, Cluster Residential Housing<br>Glossary   |
|                       | Deletion            | Article III, Section F, Mobile Home and Camping, and   |
| 03/10/90              | Amendment           | Article IV, Flood Damage Protection  |
| 03/15/91              | Amendments          | Article I, Section B, Applicability<br>Article II, Section E, Compliance Permits<br>Article III, Section D, Junkyards<br>Article III, Section K, Home Occupations                        |
| 03/10/92              | Amendments          | Article II, Section D, Table of Uses<br>Article III, Section L, Other Business<br>Article III, Section M, Signs  |
|                       | Deletion            | Article III, Section I (3), Seasonal (Intermittent) Business   |
| 03/09/93              | Amendments          | Article II, Section B, Residential/Commercial Use<br>Article II, Section D, Table of Uses<br>Article III, Section M, Signs<br>Article VI, Section D, Enforcement and Penalty<br>Glossary |
| 03/08/94              | Amendment           | Article III, Section D (b), Junkyards  |
| 03/14/95              | Amendments          | Article II, Section B (1), Residential/Commercial Zone<br>Article III, Section M (6), Signs  |

|          |            |  |
|----------|------------|--|
| 03/12/96 | Amendments | <p>Article II, Section D (2.a), Table of Uses, Add Sexually Oriented Businesses</p> <p>Article II, Section D (19.a), Table of Uses, Add Elderly Multi-Family Apartments</p> <p>Article III, Section D (h), Junkyards; General Requirement-Permit</p> <p>Article III, Section D (I), Junkyards; Applicability of Ordinance</p> <p>Article III, Section G (5), Elderly Multi-Family Apartment Residences with Three or More Units</p> <p>Article III, Section K, Home Occupation</p> <p>Article III, Section L, Campgrounds</p> <p>Article III, Section M, Signs</p> <p>Article VI, Section D (2), Enforcement and Penalties</p> <p>Article VIII, Sexually Oriented Businesses</p> |
| 03/11/97 | Amendments | <p>Article II, Section D (13.a), Table of Uses, Add Bed &amp; Breakfasts</p> <p>Glossary</p>   |
| 03/11/98 | Amendments | <p>Article II, Section F, Manufactured Housing</p> <p>Article III, Section B, Pre-Existing Non-Conforming Uses</p> <p>Article III, Section C, Ruins</p> <p>Article III, Section M (1.a), Signs</p> <p>Article III, Section O, Churches</p> <p>Article III, Section P, Hotels, Motels, Inns, Resorts</p> <p>Article V, Section A, Appointments; revised.</p> <p>Article VI, Section C (2), Zoning Compliance Inspector</p> <p>Article VI, Section F, Driveways</p>  |
|          | Deletions  | <p>Article II, Section C, Pre-Existing Non-Conforming Lots</p> <p>Article III, Section G (1.d), Variances for Frontage Regulations</p> <p>Article III, Section M (1.e), Signs</p>  |
| 03/09/99 | Amendments | <p>Article II, Section F, Manufactured Housing</p> <p>Article III, Section D (h), Junkyards</p> <p>Article III, Section D (b), Junkyards</p> <p>Article III, Section F, Section Yard Sales</p> <p>Article III, Section G (3), Multi-Family Residences</p> <p>Article III, Section I (1.b), Building Lots</p> <p>Glossary of Terms, Add Yard Sales</p>  |
| 03/14/00 | Amendments | <p>Article III, Section G (1.c), Single Family Residences</p> <p>Article III, Section I (1.c), Business</p>  |
|          | Repealed   | <p>Article III, Section G, Preamble</p>  |
|          | Adoptions  | <p>Article III, Section Q, Manufactured Housing</p> <p>Article III, Section R, Telecommunication Towers</p>  |



|          |            |   |
|----------|------------|---|
| 03/14/01 | Amendments | Article III, Section I (1.g), Manufactured Units<br>Article III, Section R & E (1.a), General Regulations   |
|          | Adoptions  | Article II, Section D (5), Principal Uses<br>Article II, Section D (10), Principal Uses<br>Article II, Section E, Motorized Vehicle Sale Facilities<br>Article III, Section K (2.i), Improved Area<br>Article III, Section K (2.iv), Hours of Operation<br>Article III, Section M (1.a), Farms<br>Article III, Section M (1.c), Signs<br>Article III, Section M (2), Farms<br>Article III, Section M (3), Farms<br>Article III, Section M (6), Farms<br>Article III, Section M (7), Business or Professional Enterprise<br>Article III, Section R & D (4), Wireless Communication<br>Article VI, Section D (2.iv), Fines<br>Glossary of Terms, Add Agriculture, Farm, Farming |
|          | Repealed   | Article III, Section Q (7), Expiration  |
| 03/12/02 | Adoptions  | Article II, Zones and Districts<br>Article IV, Section C (23.a), Recreational Vehicle, defined<br>Article IV, Section D (4), Recreational Vehicle<br>Article II, Section D, Table of Uses (23.a), Gardening Retail Sale   |
|          | Repealed   | Article VI, Section E (4.a), Variances<br>Article IV, Section A, Flood Zone (date)  |
| 03/11/03 | Amendments | Article III, Section M (3), General Provisions<br>Article VIII, Section B (1.a) Sexually Oriented Business  |
|          | Adoptions  | Article X, Section B, Severability<br>Article XI, Section A-K, Growth Management Ordinances   |
| 03/09/04 | Amendment  | Article VI, Section F, Driveways  |
| 03/08/05 | Amendment  | Article XI, Section H (5), Growth Management Ordinance<br>Article XI, Section H (1), Growth Management Ordinance<br>Article II, Section B (2.b), Residential/Light Commercial<br>Article III, Section G (1.d), Wetlands Set Back  |
|          | Adoption   | Article III, Section G (1.e), Single Family Accessory Dwelling  |
| 03/14/06 | Amendments | Article II, Section B (2.c.ii & iii) Light Comm/Residential Zone use<br>Article II, Section a (2) Wetlands Set Back   |
|          | Adoption   | Article III, Section S, Kennels & Animal Boarding Facilities  |
| 03/13/07 | Amendments | Glossary, Public Road/Lot/Structure/Dwelling/Elderly Housing<br>Article III, Section I (1.b), Building Lots<br>Article III, Section Q (4.e), Illustration<br>Article XI, Section J, Sunset  |
|          | Adoption   | Article III, Section B 7, Pre-Existing non-conforming seasonal dwellings  |

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| 03/11/08   | Amendments | Article III, - Section D (5) (b) General Operating Requirements<br>Article III – Section M. Signs 1.c<br>Article III – Section M. Signs 1.d<br>Article III – Section M. Signs 7<br>Article IV – Section C Definitions of Terms<br>Article IV – Section D Administration (3)(a)(iii), (iv), (d), (e), (f).<br>Article IV – Section D Administration (4)         |
| 03/10/09   | Amendment  | Article III - Section D 3.f Junkyard Fees  |
|            | Adoption   | Article III - Section T Small Wind Energy Systems  |
| 03/09/10   | Amendment  | Article IV Flood Damage Protection   |
|            | Adoptions  | Article II - Section C 13.a Bed & Breakfast<br>Article III - Section P Hotels, Motels, Inns, Resorts, B & B's  |
| 03/08/2011 | Amendments | Article II - Section B 1 b-iii Zones & Districts<br>Article II - Section C 2 & 5 Table of Uses<br>Article VI - Section E 5 iii & iv Administration and Enforcement   |
| 3/13/2012  | Amendments | Article II - Section B 1 b I Zones & Districts<br>Article III - Section G e Single Family Accessory Dwelling<br>Article III - Section M 8 Signs<br>Article IV - Section C Definition of Terms, Accessory Structures<br>Article IV - Section D Administration, Accessory Structures<br>Article VI - Section F Driveways<br>Article XI - Section J Sunset (2017) |
| 3/12/2013  | Amendment  | Article III - Section M 5 Signs  |
| 3/11/2014  | Amendments | Article III - Section M 1, b Signs<br>Article III - Section M 3, b (ix) Signs<br>Article VI - Section D 2 (d) Enforcement & Penalty  |
| 03/14/2017 | Amendments | Article III.G.1.e, II., C.17.b and Glossary RE: “Accessory Dwelling Unit”. (Entirety)<br>Article VI.A.1 reference RSA 31:70 (repealed)<br>Article XI - Growth Ordinance<br>Article III - M Sign Ordinance (entirety)   |
| 03/14/2018 | Amendment  | Article III, Section G,1e - ADU provisions   |
| 3/12/2019  | Amendments | Article III Section G 1 e ii ADU provisions<br>Article III Section G 1 e iv ADU provisions<br>Article I Section C Table of Uses<br>Article I Section B 3 RSA674:19   |
| 3/10/2020  | Amendments | Ordinances<br>Article III Section G 1 e vi and ix ADU provisions<br>Article III Section G 1 e viii ADU provisions<br>Article III Section G 1 e xi ADU provisions<br>(Section G 1 e i thru xi were renumbered when vi was removed)<br>Article III Section M 6, Signs  |

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| February<br>2021 |            | Non-Substantive Changes: Added Table of Contents, corrected Statutes that were no longer in affect or referenced improperly, corrected typos, punctuation, and miscellaneous corrections to numbering sequences where numbers were missing, etc. Formatting for margins and paragraphs, and page breaks also inserted. |
| April<br>2022    | Amendments | Article I.C Table of Uses: Brewery, Cannabis Dispensary, and Sports Facility<br>Article III.G.1.b. Contiguous buildable acre<br>Article III.M.2. Banner Signs<br>Article III.M.4. Sq footage of signs for more than one business   |
|                  | Adoption   | Adoption of Groundwater Protection District: Article II.B.4. & Article II.F. Appendix C. Aquifer Protection Map  |