

Town of Newington Zoning Ordinance (NZO)

ARTICLE I – *Introduction*

SECTION 1 - Authority: This ordinance has been prepared in accordance with the provisions of NH RSA 674:16 to 21. It was originally adopted by the voters of the Town of Newington, New Hampshire, in an official meeting convened in March 1951.

SECTION 2 – Title and Certification: This ordinance and accompanying official zoning map shall be known as and may be cited as the Zoning Ordinance, Town of Newington, New Hampshire. An Official Zoning Map is one certified by signatures of the Board of Selectman, attested by the Town Clerk’s signature, and dated with the date of adoption of the NZO. Map changes require annotation of changes with a new adoption date and the Board of Selectmen and Clerk to re-sign. The Town Clerk retains a master copy of the NZO on file as the final authority for resolving disputes.

SECTION 3 - Purpose: This ordinance promotes health, safety, morals, convenience, economic prosperity, and general welfare in the Town of Newington, NH. It regulates use, civic design and arrangement of structures and land for trade, industry, residence, transportation, and other public requirements in accordance with the Town Master Plan to retain the rural charm now attached to our town. The ordinance seeks to achieve its purpose by defining standard terms; establishing districts; setting limits on structures and land use; identifying requirements for specific facilities, businesses and land use; and identifying procedures for the administration, amendment and enforcement of this Zoning Ordinance.

SECTION 4 - Jurisdiction: The provisions of this ordinance shall govern all structures, all land and all water areas within the boundaries of the Town of Newington, with the exception of land that falls within the jurisdiction of the Pease Development Authority. In that situation, the role of the Town and its regulations shall be advisory. See NH RSA 12-G:13.

ARTICLE II - *Definitions*

SECTION 1 - General Definitions: Except as specifically defined herein all words in this ordinance shall carry their customary dictionary meanings. For the purpose of this ordinance, certain words or terms used herein are defined as follows:

"Town" means the Town of Newington.

"Legislative Body" means an Annual or Special Town Meeting.

"Municipal Officers" means the Board of Selectmen, Town of Newington, New Hampshire.

Words used in the present tense include future tense.

Words used in the singular include the plural, and words used in the plural include the singular.

The word **"shall"** is mandatory; the word **"may"** is permissive.

The word **"person"** includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The word **"lot"** or **"occupied"** as applied to any land or building or water area, shall be construed to include the words, **"intended, arranged, or designed to be used or occupied"**.

SECTION 2 - List of Definitions

Abandoned Sign: Any sign which pertains to a time, event, or purpose which no longer applies, or to a business which is no longer on the premises, shall be deemed to have been abandoned.

Abutter: Any person whose property adjoins, is directly across the street or stream, or is within 200 feet of the land under consideration by the Planning Board or Zoning Board of Adjustment including any person whose property meets these criteria and is located in a neighboring municipality. For the purposes of receiving testimony only and not for the purpose of notification, the term Abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term Abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII

Accessory dwelling unit (ADU) is a subordinate dwelling unit that is within or attached to a single-family dwelling and 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. Every accessory dwelling unit shall be deemed a unit of workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59.

Accessory Use or Building: A use or building customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult Bookstore or Adult Video Store: A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display, sale or rental of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1; or, instruments, devices, or paraphernalia which are designed for use in connection with "*sexual conduct*" as defined in NH RSA 571-B:1, other than birth control devices. 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 15% of the total floor area of the establishment to the sale of books and periodicals.

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 NH 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 NH RSA 571-B:1.

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 NH RSA 571-B:1.

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 of materials which meet the definition of "*harmful to minors*" and/or "*sexual content*" as set forth in NH RSA 571-B:1.

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 or fewer persons per machine at any one 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 NH RSA 571-B:1.

Adult Motion Picture Theater: An establishment with a capacity of five 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 content*" as set forth in NH RSA 571-B:1, for observation by patrons. For the purposes of this ordinance, substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

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 NH RSA 571-B:1.

Attached Sign: A sign which is attached to a building.

Bed and Breakfast: A private owner occupied residence that advertises and offers sleeping accommodations to guests in four or fewer rooms for rent with the owner present and provides breakfast to guests only. A guest is defined as a person who rents a room in a bed and breakfast facility for fewer than 30 consecutive days.

Billboard: A sign which directs attention to a business, product, activity or service which is not conducted, sold or offered on the premises where such sign is located.

Boarding or Rooming House: A dwelling in which living space without kitchen facilities is rented to three or more persons with or without meals.

Building: Any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals or chattels.

Building Height: The vertical difference between the lowest ground elevation of the predevelopment (or redevelopment) at the foundation of the building, structure or wall and the highest elevation of the roof, parapet wall, or uppermost part. Chimneys, vents or utility service structures shall not be included in the measurement of vertical dimensions. A special exception regarding the building height may be granted by the Planning Board

Building Frontage: The width of a building's primary facade, at grade level.

Business Sign: A sign which directs attention to a business, profession, service, product, activity, or entertainment sold or offered upon the premises where such sign is located.

Dwelling - Single Family: A detached building containing one dwelling unit.

Dwelling - Two-Family: A detached building containing two dwelling units.

Dwelling Unit: A house, an apartment, or other group of rooms, or a single room is regarded as a dwelling unit when it is used for the year-round occupancy as separate living quarters, that is, when the occupants do not live and eat with any other persons in the structure and there is either direct access from outside or through a common hall, or a kitchen or cooking equipment for the exclusive use of the occupants of the unit.

Family: One or more persons occupying a dwelling unit and living as a single housekeeping unit.

Free Standing Sign: A sign which is not attached to a building.

Frontage: Shall mean the width of the lot bordering on the public right-of-way. In those instances in which a property abuts multiple public ways, the Planning Board shall determine which side of the parcel is frontage.

Front Yard: An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and located between the street right-of-way line and the front line of the building projected to the side lines of the lot.

Home Occupation: An occupation conducted by a town resident in his/her legally established domicile, and which employs no non-residents.

Home Business: A business owned and operated by a town resident in his/her legally established domicile. The business may employ up to a maximum of three non-residents.

Industrial Corridor Road: A roadway corridor which begins at Woodbury Avenue and runs easterly down Piscataqua Drive, thence turns and runs northward to River Road, as depicted by plans prepared by Meridian Land Services, dated February 12, 1999, Revision V.

Junk Yard: A place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

(a) Automotive recycling yards, meaning a motor vehicle junk yard, as identified in subparagraph (c), the primary purpose of which is to salvage multiple motor vehicle parts and

materials for recycling or reuse;

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this ordinance, and having frontage upon a public street.

Lot Width: The distance between the side boundaries of the lot measured at the front building line.

Major Street: A street designated as such in the Major Street Plan.

Meteorological Tower (Met Tower). This is a temporary (3 years or less), information gathering tower. It 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.

Manufactured Housing: 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 presite built housing as defined in RSA 674:31-a

Manufacturing, Light means all manufacturing and assembly processes carried on completely within an enclosed structure and involving no permanent outside storage of equipment or materials, except as a customary accessory use in connection with the permitted activities. This definition shall not be interpreted to include any industry, the operations of which shall result in significant objectionable noise, glare, vibration, dust, smoke or odor which would constitute a nuisance. No individual raw materials or processed parts shall exceed 1,000 pounds, or as

determined by the Planning Board.

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

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

Non-conforming Lot: A lot whose area is less than the minimum dimensional requirements for the zoning district in which it is situated.

Non-conforming Use: A use of land which is not permitted by the ordinance for the zoning district in which the use occurs.

Non-conforming Structure: A structure which does not comply with the terms of the ordinance.

Nude Model Studio: A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals, and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Nursing Home: Any dwelling place licensed by the State of New Hampshire in which three or more aged, disabled or ill persons who are dependent or not capable of properly caring for themselves are housed and furnished with meals, whether served in a central dining room or otherwise, and nursing care for compensation. This includes "convalescent facilities" and "rest homes" or "elderly congregate care residential facilities" limited to persons fifty-five (55) years of age or older with a present or anticipated future need for on-site nursing care.

Off-Premise Sign: A sign which advertises or publicizes an activity not conducted on the premises upon which such sign is situated.

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

Rear Yard: An open space on the same lot with a principal building, unoccupied except by a permitted accessory building, or use, extending the full width of the lot and located between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

Recreational Vehicle: To be defined.

Retail: A use devoted to the sale, rent or lease of merchandise directly to the consumer for use off premises. For the purposes of this ordinance, wholesale clubs shall be considered a retail use.

Right-of-Way means and includes all town, state and federal highways and the land on either side of same as covered by statutes to determine the width of right-of-way, also all private rights-of-way.

Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: physical contact in the form of wrestling or tumbling between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or when the activities in sections A or B above are characterized by an emphasis on activities which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Sexually Oriented Business: adult bookstore, adult video store, adult motion picture theater, adult motion picture arcade, adult drive-in theater, adult cabaret, adult motel, adult theater, nude model studio, sexual encounter center, or any combination of the above.

Shopping Center: A group of retail stores, planned and developed for the site on which they are built.

Side Yard: An open, unoccupied space on the same lot with a principal building located between the side of the building and the side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. On corner lots, the side yard abuts a street, and the side yard requirements shall conform to those of the front yard.

Sign: Any device, structure, banner, fixture, placard, or painted surface

A) which uses graphics, symbols, and/or written copy to advertise or identify any establishment, product, goods, service, or activity, and

B) whose surface area is two square feet or larger, and

C) is visible from the public right-of-way.

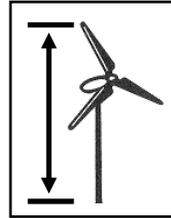
Shadow Flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

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

Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground. For the purposes of this ordinance, the following shall not be considered structures: docks, detached stairways, and paved driveways utilized for access to a property.

System Height (Wind Generation):

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



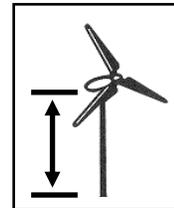
Telecommunications Facility: Any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), personal communications service (PCS), and common carrier wireless exchange access services.

Temporary Sign: A sign announcing a new business on the premises, said sign only to be displayed while awaiting installation of a permanent sign;

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

Tower Height (Wind Generation):

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



Variance: A relaxation of the terms of the ordinance, in accordance with NH RSA 674:33. See Article XIX Administration.

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.

ARTICLE III – Zoning *Districts*

For the purpose of this ordinance, the Town of Newington is divided into the following zones as shown on the official zoning map on file with the Town Clerk and the Rockingham County Registry of Deeds. The district boundaries are shown on the Official Zoning Map.

1. *Residential District - R Zone*
2. *Office District - O Zone*
3. *Commercial District – C Zone*
4. *Marina District - M Zone*
5. *Industrial District - I Zone*
6. *Waterfront Industry & Commerce District - W Zone*
7. *Historic – H Zone*
8. *Shattuck Way (SWOD Zone),*
9. *Pease Tradeport District - PT Zone*
10. *Natural Resource Protection District - NRP Zone*

Overlay District:

Wetlands Overlay District (**WOD Zone**) See article VIII for details

SECTION 1 - Residential District "R"

A - Description and Purpose: The Residential "R" District is established as a zone in which the principle use of the land is for single-family dwellings at low density, together with recreational facilities which will encourage the development of well-rounded neighborhood living. Also included in the "R" District are open areas where similar residential growth appears likely. Any future development which does not perform a neighborhood function may require additional conditions of approval imposed by the Planning Board on a case by case basis.

B - Uses Permitted:

- (1) Single family dwellings.
- (2) Two-family dwellings
- (3) Accessory Dwelling Unit
- (4) Accessory uses or buildings, including private garages, parking areas, non-commercial greenhouses, and workshops, providing they conform to the setbacks required for principal building.
- (5) Public facilities and grounds.

(6) Home occupations and home businesses subject to the conditions specified in Article XVI below.

(7) Roadside stand for the sale of produce raised within the Town of Newington provided that three off-street parking areas are provided.

(8) Agriculture.

(9) Bed & Breakfast Inns, provided that such facilities have no more than four (4) rooms for rent and that the Planning Board grants a Conditional Use Permit (CUP) and reviews and approves a site plan application. CUP criteria includes:

- a) Proposal complies with the purpose of this Section;
- b) The use is compatible with abutting and surrounding land uses;
- c) The use provides both vehicular and pedestrian safety; and
- d) There are no known site plan review issues of concern.

SECTION 2 - Office District "O"

A – Description and Purpose: The *Office District* is a zone in which the principal use of the land is office buildings, research & development facilities, and light manufacturing. It is the intent of the ordinance to encourage the provision of safe and convenient pedestrian access between the district's office buildings and nearby restaurants.

B - Principal Uses Permitted:

(1) Offices, research & development facilities, biotech facilities, light manufacturing, warehouses, medical clinics, veterinary hospitals, and hotels not to exceed 45 feet in height.

(2) Light manufacturing, providing that it does not cause excessive noise, vibrations, smoke, gas, fumes, odor, dust fire hazard, pollution, or conditions detrimental to the health, safety, or welfare of the community.

C - Accessory Uses Permitted:

(1) Daycare facilities

(2) Non-public dining facilities that occupy no more than 10% of the floor area of the building in which they are situated.

SECTION 3 - Commercial District "C"

A - Description and Purpose: The *Commercial District* is a mixed use zone in which the principal use of the land is retail sales, office buildings, research & development facilities, and light manufacturing. The rationale for permitting non-retail uses in this predominately retail area is to reduce the district's traffic congestion and safety problems by encouraging land uses which generate lower traffic volumes.

B - Uses Permitted: Retail, offices, research & development facilities, light manufacturing, restaurants, motels, hotels, theaters, storage facilities, barber & beauty shops, laundries, repair shops, places for public worship, indoor recreational facilities such as bowling alleys, roller skating rinks, and vehicle dealers (sale, rental, or leasing), hospitals, nursing homes, schools, conference centers, and facilities to treat the developmentally disabled.

SECTION 4 - Marina District "M"

A - Description and Purpose: The *Marina District* is established in recognition of the historic use of property in close proximity to the environmentally sensitive area of Little Bay and a portion of Newington's residential district. A continued marina use at this site is desirable due to the somewhat seasonal nature of the business, the relatively light traffic volume that is generated, and the recreational opportunities, and the unique economic benefits offered by such a facility.

B - Uses Permitted: The repair, servicing, storage, dockage, moorage, and maintenance of vessels.

C - Accessory Uses Permitted:

The following accessory uses, *if* clearly subordinate to the principal use as a marina, are permitted:

- (1) Sales of marine hardware and equipment;
- (2) Sales of vessels, e.g. yacht brokerage;
- (3) Restaurant/snack bar, not to exceed 75 seats;
- (4) Maritime related office use, e.g. marine surveyor;
- (5) Light manufacturing of marine related equipment, providing that it does not cause excessive noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard, pollution, or conditions detrimental to the health, safety, or welfare of the community;

SECTION 5 - Industrial "I"

A - Description and Purpose: The "I" District is established as a zone in which the principal use of the land is for industry and associated uses. Certain open areas favorably situated with respect to transportation and containing other factors conducive to industrial development are also included. This is for the purpose of reserving suitable land for the expansion of existing industry and location of new industry.

B - Uses Permitted:

- (1) Industries provided that they shall not produce traffic congestion, cause injurious or obnoxious noise, glare, vibration, air or water pollution, hazardous waste, sewerage problems, odor, dust, fire safety hazards or other factors detrimental to health, safety and welfare of the area.
- (2) Businesses customarily serving such industries
- (3) Public utility, transportation or communication facilities
- (4) Business signs subject to Article IV, Section 6
- (5) Warehouses, truck terminals and storage
- (6) Bulk oil stations
- (7) Public facilities and grounds
- (8) Telecommunication facilities, subject to the provisions of Article XIV.

SECTION 6 - Waterfront Industry and Commerce District "W"

A - Description and Purpose: The "W" District is established as a zone in which the principal use is for activities which depend upon the ocean for transport or resources. There is a relatively limited amount of deep water frontage in the State of New Hampshire. This prime land is recognized as an invaluable natural resource of the Town of Newington and should be reserved for optimum use so that the economic benefits may be realized to their fullest extent. Any installation on shore or offshore, temporary or permanent which interferes with the purposes of this district is prohibited. In addition, the docking of commercial cruise ships is not an appropriate use due to the existing heavy marine use in this zoning district.

B - Uses Permitted

- (1) Any Industrial or Commercial activity dependent upon the ocean for transport or resources.

- (2) Marine related activities such as marine transport, marine construction, marine supply and support, vessel repair and the like. Marine research laboratory or testing or experimental facility related to the ocean.
- (3) Seafood processing and distribution.
- (4) Bulk material storage and distribution.
- (5) Energy generation facilities.
- (6) Desalination plant.
- (7) Business Signs, subject to the provisions of Article IV, Section 6.
- (8) Telecommunication facilities, subject to the provisions of Article XIV.
- (9) Residential uses for a watchman, caretaker or janitor. The industry or business shall annually certify by April 1st that the resident is a bona fide employee serving as a watchman, caretaker or janitor. Failure to do so shall make the residential use Not Permitted.

SECTION 7 - Historic Districts "H"

A - Description and Purpose: The "H" District is established within the provisions of RSA 674:46:

- (1) For the preservation of places and structures of architectural value and the heritage of the municipality which reflects its cultural, social, economic, political and architectural history;
- (2) Conserving property values in such Districts;
- (3) Promoting the use of the Historic District for the education, pleasure and welfare of the citizens of the municipality.

B - The Designated Areas are:

- (1) Beginning with both sides of Nimble Hill Road from the U.S. Air Base Line to its junction with Little Bay Road, the area to follow existing property lines of parcels fronting on said road.
- (2) All land and buildings at Bloody Point.

C - Uses Permitted

(1) Any use permitted in a Single Family Residential "R" District, subject to the provisions of the Newington Historic District Ordinance.

SECTION 8 – *Shattuck Way Overlay District “SW”*

Due to the unique nature of the Shattuck Way structures which abut the corridor shall be exempt from setback requirements in Article VI and the corner lot requirements specified in Article II. In lieu of the above referenced requirements, all paved parking lots adjacent to Shattuck Way shall be set back a minimum of fifty feet and all other structures adjacent to Shattuck Way shall be set back a minimum of seventy-five feet.

SECTION 9 - Pease Tradeport District “PT”

As noted in Article I Section 4, the Pease Development Authority (PDA) is the local land use regulatory authority (see RSA 12-G:13) for land use change for land controlled by PDA located in the Town of Newington. For further information, see the Pease Development Authority website regarding Land Use Controls in the documents section.

SECTION 10 - Natural Resource Protection District “NRP”

A - Purpose: The NRP District is established in order to conserve natural resources, protect wildlife habitats, protect significant potable water resources, and to provide the public with opportunities for passive recreation.

B – The Designated Areas are:

- (1) Great Bay Wildlife Refuge – See the Town of Newington Official Zoning Map.
- (2) Great Bay Wildlife Refuge Extension – Fabyan Point lot # 50-1
- (3) NH Fish and Game – North Residential Area lot # 6-2
- (4) NH Fish and Game – South Residential Area lots #55-1 & 53-6-2
- (5) NH Fish and Game – Goat Island

C - Permitted Uses:

- (1) Tree farms, crop land uses, and forestry
- (2) Wildlife refuge support structures
- (3) Nature trails and water access structures

ARTICLE IV - *General Provisions*

SECTION 1 - Zoning Affects All Structures, Land and Water Areas: Except as hereinafter specified, no structure, land or water area shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or altered unless in conformity with all regulations herein specified for the district in which it is located. The omission of a use from the list of those allowed in a particular district constitutes prohibition of that use in that district.

SECTION 2 - Restoration of Unsafe Property: Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Building Inspector.

SECTION 3 - Required Yard Space Shall Serve Only One Lot: No part of the off-street parking or loading spaces required about any building for the purposes of complying with the provisions of this ordinance shall be included as part of the yard, open spaces, or off-street parking or loading space similarly required for any other building.

SECTION 4 - Restrictions On Individual Manufactured Housing Units: One single manufactured home may be maintained upon a lot in a residential district as a residence providing that all provisions of the district regulations as applicable to single-family dwellings are complied with.

SECTION 5 - Restrictions On Removal of Sand, Gravel, Loam, Earth or Rock: No loam or gravel shall be hauled from any property within the Town of Newington unless approved by the Planning Board and Board of Selectmen. This shall not be construed as prohibiting removal of such material for purposes of landscaping or property improvements on the loam or gravel owners premises.

SECTION 6 - Setbacks: Accessory uses or buildings, including private garages, parking areas, non-commercial greenhouses and workshops, shall conform to the setbacks required for principal buildings.

SECTION 7 - Turnaround Space and Driveways: Adequate space shall be provided on each lot to prevent vehicles from backing onto a public road. Driveways shall have a minimum width of 10 feet.

SECTION 8 - Junk Yards Prohibited: Machinery junk yards, motor vehicle junk yards, and other type of junk yard and private or commercial dumps shall be prohibited within the Town.

SECTION 9 – Scenic Roads: Designated scenic roads are all Town of Newington roads west of the Spaulding Turnpike and north of the Newington / Greenland town line. When an activity such as the cutting or removal of trees or the alteration of all or a portion a stone wall is proposed on a designated scenic read, the Planning Board shall follow the procedures described in NH RSA 231:158.

SECTION 10 - Buildings per Lot: There shall be no more than one principal building and no more than one dwelling building per lot.

SECTION 11- Duplexes and Utilities: Each unit in a duplex shall have its own separate water and septic service and metered gas and electric power. The owner of the duplex unit is responsible for maintenance and repair of all utilities.

Section 12 – Land Disturbance: For any land disturbance such as building construction, redevelopment, excavation, earth removal, filling of land, disturbance of wetlands and the like, the applicant and or property owner shall ensure that there will be no increase in water runoff on to any abutting property. Any change in elevation requires written approval from the Building Inspector or Planning Board. This provision will be a condition of approval for a subdivision plan, site plan and building permit.

ARTICLE V—*Accessory Dwelling Units (ADUs)*

SECTION 1 - Designation: One accessory dwelling unit shall be permitted only on parcels which meet the following conditions:

- A. A legal lot of record;
- B. Contains one existing single-family detached dwelling which is a conforming use;
- C. Contains no other accessory dwelling residence(s).

SECTION 2 - Procedure: Each accessory dwelling unit shall require a building permit and an occupancy permit and meet the standards contained in the section below.

SECTION 3 - Standards:

A. New construction for an accessory dwelling unit shall comply with all the development standards for a single-family detached dwelling including, but not limited to, setbacks, height limits and shall not increase any nonconforming aspect of any existing structure.

B. The following standards shall also apply:

1. The maximum size of an ADU shall not exceed 1,000 sq. ft. area.
2. Both the ADU and the primary residence shall comply with the state Building Code and Fire Code regulations for construction, minimum living space, fire exits and smoke alarms.
3. An accessory dwelling shall not be considered to be an additional dwelling unit for the purposes of determining minimum lot size or development density of the property.
4. The main exterior entrances may not be on the same side of the building.
5. An interior door shall be provided between the principal dwelling unit and accessory dwelling unit. There is no requirement for said interior door to remain unlocked.
6. The architecture of the ADU shall match that of the primary residence.
7. Adequate off-street parking spaces shall be provided in addition to those required for the primary residence for a minimum total of three. Adequate space for a turn-around shall be provided.
8. Adequate off-street parking spaces shall be provided in addition to those required for the primary residence for a minimum total of three. Adequate space for a turn-around shall be provided.
9. There shall be no exterior stairway leading to the ADU on the front of the house.

10. There shall be no more than two bedrooms in an ADU.
11. The applicant shall make adequate provisions for water supply and sewage disposal in accordance with NH RSA 485-A: 38; however, separate utility connections are not required by the Town.
12. The owner of a property containing an accessory dwelling shall reside in either the principal or the accessory dwelling.
13. There shall be no conveyance of an accessory dwelling unit separate from the principal dwelling unit by subdivision, as that term is defined by NH RSA 674:14, nor shall the accessory dwelling unit have ownership separate from the owner of the lot on which the principal dwelling unit located. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the principal single-family dwelling.
14. No more than four persons shall occupy an ADU.

ARTICLE VI - *Non-conforming Property*

SECTION 1 - Expansion: Non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended. Otherwise conforming uses and conforming structures on land smaller than the minimum lot size specified in Table VI-1 may be enlarged subject to meeting all other ordinance requirements.

SECTION 2 - Cessation: If a non-conforming use ceases for a period of one year, or if the intent to maintain such a use ceases, all subsequent uses shall conform to the terms of the Zoning Ordinance. If a fire, flood or type of disaster destroys a non-conforming use, the land owner shall have two (2) years in which to construct the building in the same approximate area

ARTICLE VII - *Dimensional Requirements*

No building or structure shall be erected, enlarged or moved, nor shall any land use be authorized or extended, nor shall any existing lot be changed as to size or shape, except in accordance with Table VI - 1. In Table VI-I, Land Area is in thousands of square feet.

Table VI - 1

Zone	Minimum Lot Dimensions		Minimum Setbacks		Maximum Building Height	Maximum Building Coverage
	Land Area	Contiguous Road Frontage ¹	Front	Side & Rear		
<i>Airport Industrial</i>	80	200'	70'	50'	#	
<i>Industrial</i>	200	100'	75'	50'	#	
<i>Light Industrial</i>	40	100'	40'	20'	30'	
<i>Marina</i>	120	300'	75'	30'	35'	30%
<i>Mobile Home</i>	12	50'	30'	10'	15'	
<i>Office</i>	120	300'	75'	30'	#	
<i>Residential – One family</i>	80	200'	40'	15'	35'	
<i>Residential - Two family</i>	120	200'	40'	15'	35'	
<i>Commercial</i>	120	300'	75'	30'	35'	30%
<i>Waterfront Industrial</i>	200	100'	75'	50'	#	

#= Height of structures in these districts are subject to Planning Board approval.

Height Limits: *The above referenced height limits shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, transmission towers, chimneys, conveyors, derricks, radio and television towers, and other structures not intended for human occupancy.*

¹ Frontage may be along one or more contiguous, accessible public roads.

ARTICLE VIII - *Air Pollution Mitigation*

SECTION 1 - Purpose: The United States Environmental Protection Agency has recently designated New Hampshire's seacoast region as a "*Serious Ozone Nonattainment Area*". Ozone is a toxic gas. It has been well established that emissions of ozone precursors such as volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (Nox) can cause a plethora of adverse health effects. The Town of Newington seeks to curb the increase of ozone precursor emissions, many of which are generated by mobile sources, i.e. motor vehicles. The Town seeks to offset the adverse impact of development which increases motor vehicle traffic by requiring air pollution mitigation improvements, an objective that is fully consistent with the spirit and intent of the federal Clean Air Act Amendments of 1991.

SECTION 2 - Air Quality Impact Analysis Required: Proposed land development requiring site plan approval that will generate in excess of 1,000 vehicle trip ends per day (*as defined by the Trip Generation Manual, 5th edition, published by the Institute of Transportation Engineers*), or will impact any intersection at a Level of Service E or lower (*hereinafter "regulated development"*), shall be subject to an air quality impact analysis (*mesoscale and/or microscale, depending on the projected traffic impact*) by Planning Board consultants, at the applicant's expense.

SECTION 3 - Air Pollution To Be Mitigated: Any regulated development shall be required to mitigate the impact of the accompanying ozone precursor and carbon monoxide emissions. This mitigation shall bear a rational nexus to the impact of the mobile source emissions generated by the development, as identified by the air quality impact analysis. The proposed mitigation shall be subject to Planning Board review and approval as part of the Site Plan Review process. In the event that the mitigation cannot offset the total impact, the developer shall be afforded the alternative of contributing to a fund maintained by the Town of Newington for the purpose of improving air quality within the town. In no event shall the contribution required under this section exceed the greater of the following:

- 1) \$.25 for every square foot of building space which is the subject of the development application; or
- 2) the total resulting from multiplying the number of vehicle trip ends per day on the busiest day of the proposed use by \$5.

Article IX *Wetlands Overlay District*

SECTION 1 - Purpose and Intent

The purpose of this article is to protect the public health, safety and general welfare, as well as, the wetland's ecological integrity and function by controlling and guiding the use of land areas which have been found to be wetlands. It is intended that this article shall:

A - Prevent development of structures and land uses on wetlands which will contribute to pollution of surface and groundwater by sewage or toxic substances or sedimentation;

B - Prevent destruction of, or significant changes to natural wetlands which provide flood protection, provide filtration of water flowing into ponds and streams, augment stream flow during dry periods, or are connected to the ground or surface water supply;

C - Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 483- A:1-b;

D - Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;

E - Prevent unnecessary or excessive expense to the Town in providing or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands;

F - Prevent damage to structures and properties caused by inappropriate development of wetlands.

SECTION 2 - Wetlands Defined

“Wetland” is an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to swamps, streams, ponds, vernal pools, marshes, bogs, tidal wetlands and similar areas. Man-made detention basins and treatment swales are not to be construed as wetlands.

“Tidal Wetlands” are defined as wetlands whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

“Vernal Pools” are defined as a temporary body of water providing essential breeding habitat for certain amphibians and invertebrates and that do not support fish. For reference, see *Identification and Documentation of Vernal Pools in New Hampshire, 1997*.

Delineation Requirements: The precise location of a wetland boundary in any particular case must be determined by on-site inspection of soils, vegetation, and hydrology by a New Hampshire Certified wetland scientist using the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January 1987)* and *Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998)* published by the New England Interstate Water Pollution Control Commission.

SECTION 3 - District Boundaries

The requirements of this article are applicable to the entire Town of Newington and include all jurisdictional wetlands as defined in Section 2 above, as well as, all prime wetlands shown on the most recent edition of the Town of Newington's Prime Wetland Map.

SECTION 4 - Permitted and Prohibited Land Uses in Wetlands

A - Prohibited uses include any use that alters the surface configuration of the land by the addition of fill or by dredging, except if expressly permitted in Section B below.

B - Permitted uses are as follows:

- (1) Agriculture, including grazing, crop production and the construction of fences, using *Best Management Wetlands Practices for Agriculture* (July 1993- Amended September 1998) provided that such use does not cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion.
- (2) Forestry and tree farming using *Best Management Practices Erosion Control on Timber Harvesting Operations in New Hampshire* (April 1996). This permitted use includes the construction of an access road for said purpose.
- (3) Wildlife habitat enhancement and management.
- (4) Passive recreational uses consistent with the purpose and intent of this article as defined in Section one above.
- (5) Conservation areas and nature trails using *Best Management Practices for Erosion Control During Trail Maintenance and Construction* (1994 updated 1996).
- (6) Driveways by Conditional Use Permit Special Exception as provided for in Section 4C below.
- (7) The construction of footbridges, catwalks and wharves, provided that:

- a) Said structures are constructed on posts or pilings so as to permit unobstructed flow of water;
- b) The natural contour of the wetland is preserved; and
- c) The Planning Board has approved the proposed construction of the outbridges, catwalks and wharves.

C. Conditional Use Permit

- (1) The Planning Board may grant a Conditional Use Permit (CUP) in accordance with RSA 674:21, II for the construction of roads and other access ways, and for utility pipelines, underground lines, power lines, and other transmission lines provided that all of the following conditions are found to exist:
 - i. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
 - ii. Design and construction methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
 - iii. No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.
 - iv. Economic advantage alone is not reason for the proposed construction.
- (2) Prior to the Planning Board's granting of a Conditional Use Permit, the applicant shall agree to submit a performance security to the Board of Selectmen. The security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel, to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.
- (3) The Planning Board, with the concurrence of the Conservation Commission, may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Part. The cost of this assessment shall be borne by the applicant.
- (4) The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for review of documents required by particular applications.

SECTION 5 - Minimum Lot Size Requirements

Areas designated as jurisdictional wetlands may be used to fulfill no more than 50% of the minimum lot size required by the Zoning Ordinance, provided that the upland area includes at least 30,000 contiguous square feet of land area and 60,000 contiguous square feet for two-family dwellings outside of wetland buffers and property line setbacks.

SECTION 6 - Wetland Buffer Provisions

The following vegetative buffers shall be observed in order to protect the integrity and functionality of the wetlands resources referenced below (Reference *Buffers for Wetlands & Surface Waters: A guidebook for New Hampshire Municipalities*, revised May 1997).

Resource	Size of Resource	Type of Buffer	Size of Buffer
All Wetlands	Greater than 5,000 square feet	No-cut and No- Disturbance	25 Feet
Vernal Pools	All Sizes	No- cut and No- Disturbance	25 Feet
Tidal & Prime Wetlands	All Sizes	Limited- Cut*	75 Feet

*"Limited- Cut" buffer cited above means a healthy, well-distributed stand of trees, saplings, shrubs and ground cover that must be maintained and which leaves an intact vegetated buffer. Tree-cutting shall be limited to 50% of the basal area of trees, and 50% of the total number of saplings over a 20- year period. Reference- New Hampshire's Comprehensive Shoreland Protection Act (RSA 483- B).

SECTION 7 - Structural Setbacks

The following setbacks to wetlands shall be observed by all structures in order to protect the integrity and functionality of the wetlands resources referenced below.

Resource	Size of Resource	Relationship to Surface Waters	Minimum Setback
All Wetlands	All Sizes greater than 3,000 Square feet	Contiguous with Surface Waters	100 Feet
All Wetlands except Prime Wetlands & Vernal Pools	Greater than 5,000 square feet	Not Contiguous with Surface Waters	50 Feet
All Wetlands except Prime Wetlands & Vernal Pools	5,000 square feet or less	-	0 Feet
Vernal Pools	All Sizes	-	50 Feet

SECTION 8 - Exemptions

Undeveloped building lots of 3 acres or less that were created prior to 2003 shall be exempt from the pond & stream buffer and pond & stream setback requirements in this article.

SECTION 9 - Violations

Any wetland (including prime wetlands and vernal pools) or its buffer altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5 and under the direction of a New Hampshire certified wetland scientist and said restoration shall be subject to review by the Newington Conservation Commission. When appropriate, the Town can seek relief as per RSA 676:15; the Town may impose civil fines imposed as per RSA 676:17.

Article X - Signs

SECTION 1 - Purpose & Intent: The purpose of this article is to permit and regulate signs in a manner that protects the public and maximizes traffic safety; enhances the aesthetic and visual environment of the Town; and protects the economic advantages enjoyed by Newington property owners, including property values. These purposes are consistent with the objectives of the Town’s Master Plan.

SECTION 2 - Sign Permit Required: No sign, except those that are specifically exempted by the terms of this article, shall be erected without a *Sign Permit* issued by the Town Planner.

SECTION 3 – Exempt Signs: Temporary signs that are erected, maintained or otherwise posted, owned or leased by the federal government, the State of New Hampshire or the Town of Newington or installed per the order of the Newington Selectmen or their agents are exempt from the requirements of this ordinance.

SECTION 4 - Dimensional Limits: All signs, except those addressed in Section 5A and 5B of this article, shall adhere to the dimensional requirements set forth in *Table XI-4*. In determining the surface area of a free standing sign, *one* side of the sign shall be measured.

Table XI-4 - *Dimensional Limits*

		Commercial Zone	Office, Airport & All Industrial Zones	All Other Zones
<i>Free Standing Signs</i>	Maximum # of signs per lot	1	1	1
	Maximum sign area, per side	100 sf*	50sf*	2sf
	Maximum aggregate sign area, all sides	200sf	100sf	4sf
	Maximum height above grade	35'	20'	6'
<i>Attached Signs</i>	Maximum aggregate area			
	On building front	**	150sf	4sf
	On building sides & rear (each side)	75sf	25sf	4sf

* 1.5 square feet of sign area allowed for every linear foot of building frontage, up to the maximum specified.

** 1 square foot of sign area allowed for every linear foot of building frontage of each individual business.

SECTION 5 - Other Permitted Signs: In addition to the signs that are permitted by Section 4 of this article, each lot shall be allowed the Other and Temporary signs permitted by *Tables XI-5A and 5B*:

Table XI-5A – Other Permitted Signs

	Maximum # per lot	Maximum Area per Sign Face	Maximum Duration	Sign Permit Required
Entrance & Exit signs, no higher than 3' above grade	2 per driveway	4sf	no limit	yes
Directional Signs	no limit	4sf	no limit	yes

Table XI-5B – Temporary Signs

	Maximum # per lot	Maximum Area per Sign Face	Maximum Duration	Sign Permit Required
Signs when offering the premises for sale, rent or lease or notice of open house	1*	16sf	6 months, subject to renewal	no
Signs when building or property has ongoing construction or renovation	no limit	32sf	6 months**	no
Sign when yard sale is planned	1*	8sf	1 week	no
Signs when an election is upcoming***	no limit	16sf	2 months	no
Signs when agricultural products grown or produced on the premises	no limit	16sf	no limit	no
Special Event displays when signs are proposed	1*	100sf	Discretion of Selectmen	yes

* 2 signs shall be permitted on corner lots, but no more than 1 shall be permitted along each street frontage.

** or the duration of the project, whichever is less.

***Such signs shall comply with RSA 664:17.

SECTION 6 - Setbacks: All signs except *entrance & exit signs, directional signs, and yard sale signs* shall adhere to the minimum setbacks from property lines required by this ordinance of principal buildings, except that permitted signs for legal home businesses in the Residential Zone may be situated as close as twenty feet to the roadway pavement.

SECTION 7 - Prohibited Signs & Devices, All Zoning Districts: The following are prohibited:

A - Signs that are animated, moving, flashing, or signs that emit noise.

B - Rotating beacons.

C - Off-Premise signs.

D - Signs painted on or attached to a vehicle or trailer parked for the purpose of advertising or directing people to a business or activity.

E - Signs that, in the judgment of the Selectmen, **impede the view** of traffic, traffic safety signs, or traffic signals.

F - Signs that contain **pornographic** words or pictures.

G - Signs made of highly **combustible** materials.

H - Free standing signs that are **not permanently anchored** to the ground.

I - Attached signs which extend above the building's **parapet** or **eaves**.

J - Any sign or any sign location that is **not specifically permitted** by this article.

SECTION 7 - Shielding: Light directed toward signs shall be shielded in such a way that the source of said light is not visible three feet above grade at the lot line.

SECTION 8 - Neon Lighting & Signs: LED or other types of lighting for continuous or near continuous decorative lighting that outlines a building, or free form shape, shall conform with the dimensional requirements of signs.

SECTION 9 - Sign Maintenance: Every sign shall be maintained in good structural condition at all times. The Selectmen or their designee shall have the authority to order the painting, repair, alteration or removal of any sign. Upon failure to comply with an order to repair or remove said sign within 30 days, the Selectmen are hereby authorized to cause the removal of said sign. All expenses associated with any such repair or removal shall be borne by the owner of the land upon which said sign is situated.

SECTION 10 - Signs on Public Property: The Selectmen shall immediately remove from public property any unauthorized sign which does not comply with the terms of this ordinance.

SECTION 11 - Abandoned Signs: Abandoned signs are prohibited, and shall be removed by the land owner immediately. The advertisement of any subsequent business, product or service shall be restricted to signs which comply with the terms of this article.

SECTION 12 - Non-Conforming Signs: Signs legally in existence at the time of installation that do not conform to the standards set forth in this ordinance shall not be altered, enlarged, moved, or replaced, except in a manner that would bring the sign into conformance with the terms of this article, provided, however, nothing herein shall prevent any change in the message portion of any non-conforming sign.

SECTION 13 - Sign Permit Expiration: If the work authorized under a sign permit has not been completed within six months after the date of issuance, said permit shall become null and void.

Article XI - *Sexually Oriented Businesses*

SECTION 1 - The Purpose & Intent of this article is:

A - to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses;

B - to protect public health, safety and general welfare; and

C - to prevent the blight and deterioration which generally accompanies and is brought about by the concentration of sexually oriented businesses.

D - to mitigate the secondary effects of sexually oriented businesses, effects which were cited by the Newington Planning Board in its *Findings of Fact* dated August 5, 1993.

It is not the intent 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, nor is it the intent of this article to condone or legitimize the distribution of obscene material.

SECTION 2 - Zoning District: Sexually oriented businesses are only permitted in the Commercial (C) Zone.

SECTION 3 - Buffers: Sexually oriented businesses shall **not** be permitted in or within 400 feet of a church, 500 feet of a school, or 1,000 feet of a residence, another sexually oriented business, or a sexually oriented business for which a building permit has been applied for.

SECTION 4 - Other Prohibited Locations: Sexually oriented businesses shall **not** be permitted in enclosed shopping malls or any establishment patronized by minors.

SECTION 5 - The Measure of Distance between any sexually oriented business and other named point of reference shall be measured in a straight line.

SECTION 6 - Free-Standing Structures: Sexually oriented businesses shall only be permitted in single use, free-standing structures. In no instance shall sexually oriented business share premises, facilities or buildings with businesses which are not sexually oriented.

SECTION 7 - Site Plan Approval by the Newington Planning Board shall be a pre-requisite for the establishment of a sexually oriented business. The Planning Board may impose reasonable restrictions relative to buffers, outdoor lighting, signs, parking, egress and ingress, pedestrian movement, landscaping, building aesthetics, and measures to ensure that displays of

merchandise conform with NH RSA 571-B.

SECTION 8 - Public Nuisances: Violation of the use provisions of this ordinance is declared to be a public nuisance per se, which shall be abated by the Town of Newington by way of civil abatement procedures.

SECTION 9 - Limiting Clause: Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation or maintenance of any business, building or use which violates any Town of Newington ordinance or statute of the State of New Hampshire relative to public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

SECTION 10 - Severability: If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The legislative body of the Town of Newington hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

ARTICLE XII - *Telecommunication Facilities*

SECTION 1 - Signs: Telecommunication towers shall not contain signs or graphic representation of any kind.

SECTION 2 - Evidence that Co-Location is not Feasible: If a new tower is being proposed, the applicant shall submit evidence which is satisfactory to the Planning Board, that no existing structure can accommodate the applicant's antenna(s).

SECTION 3 - Cooperation: An applicant proposing to build a new tower shall submit a binding agreement which provides for the maximum allowance of antenna co-location on the new structure. This agreement shall obligate the applicant to supply antenna co-location for reasonable fees and costs to other telecommunications providers. Failure to provide an agreement that is satisfactory to the Planning Board is grounds for denial.

SECTION 4 - A Bond shall be submitted by the applicant to cover the costs of tower removal in the case of abandonment. The applicant shall submit a written agreement, the terms of which are to be satisfactory to the Planning Board, which governs the bond.

SECTION 5 - Abandoned Telecommunications Facilities are those which have not operated for a period of twelve consecutive months. In such a case, the Town shall be authorized to execute the security, and cause the tower to be removed.

ARTICLE XIII— *Trailers & Mobile Storage Containers*

The following conditions must be met for trailers, mobile storage containers, and mobile towers in the Office and Commercial Zones:

SECTION 1 – Permit Required: The property owner shall obtain a permit for all trailers, mobile storage containers or mobile towers on-site longer than ten business days. The permit must be posted in plain view on the trailer/container/tower. In the case of a Town/State declared emergency, a tower permit is required no later than two days after the erection of the tower.

SECTION 2 – Application: Property owners shall apply to the Building Inspector for a permit. Owners must attach the appropriate fee and a sketch or plan showing the proposed location with respect to setbacks, easements, roads, and parking areas. The Building Inspector will coordinate a review by the Fire Chief.

SECTION 3 – Duration: The use of storage trailers/containers/towers will be permitted on a temporary basis limited to no more than 90 days. Trailers/storage containers/towers shall be removed once the permit expires.

EXEMPTIONS: (subject to Planning Board approval)

- A. The use of trailers for storage or temporary office space may be permitted for the duration of the construction, expansion, or repair of a permanent business.
- B. The use of trailers/containers to store *recycled* materials (i.e. tires, pallets, etc) may be permitted on renewable basis.

SECTION 4 – Number & Location: The placement of more than two (2) trailers/containers/towers on a lot will require site plan review by the Planning Board. No trailer /container/tower shall be situated in such a way as to obstruct safe sight distance, fire lanes, or setbacks.

SECTION 5 – Limitation on Occupancy: Occupancy of trailers for temporary office space is limited to businesses undergoing initial construction, expansion, or repair of a permanent place of business. The Building Inspector shall approve all temporary utility connections to occupied trailers.

SECTION 6 – Storage of Material: Storage trailers/containers/towers shall be locked at all times when an attendant is not present. The outside storage of materials beneath, above, or around a trailer/container/tower is prohibited.

Article XIV – *Home Occupations & Home Businesses*

The intent of this article is to permit home occupations and home businesses to function in a manner that has no noticeable impact on the quality and character of Newington’s residential district.

SECTION 1 - Home Occupations may be permitted in the Residential Zone only if they meet all of the following conditions:

- A) Home occupations shall be performed only by the resident(s) of the domicile. There shall be no outside employees.
- B) Home occupations shall have no impact on the surrounding residential neighborhood.
- C) A home occupation may only be conducted within a residence or pre-existing accessory building.
- D) There shall be no display of goods, wares or storage of materials visible from any public way, shoreline or abutting residences.
- E) Signs shall meet the requirements of the Newington Zoning Ordinance.
- F) No commercial vehicles related to said home occupation shall be stored on the premises.
- G) Parking generated by the home occupation shall be located off the street.
- H) The building or premises containing the home occupation shall not be detrimental to the residential character of the neighborhood due to its exterior appearance. There shall be no emission of odor, smoke, dust, vibration, noise or detectable tones.
- I) No equipment or process shall be used that creates visual or audible interference in any cell phone, wireless LAN, radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- J) Bandwidth consumption or denial of service to the publicly accessed information infrastructure (coaxial, fiber, wired or wireless) must not be perceptible at the lot line at a higher level than is customary in a residential neighborhood.
- K) Water consumption shall be no more than is normal in a residential neighborhood.
- L) On-site storage of hazardous materials other than small quantities of products that are intended for normal household use shall be subject to approval by the Newington Fire Chief.

SECTION 2 - Permitted Home Occupations: The following are permitted, subject to the conditions specified in Section 1 above: engineer, consultant, advisor, surveyor, sales representative, programmer, systems analyst, computer operator, artist, illustrator, graphic artist, draftsman, photographer, writer, architect, seamstress, decorator, insurance agent, real estate agent, and any similar use, provided that the Planning Board, after a public hearing, finds that all of the conditions in Section 1 are met

SECTION 3 - Home Businesses may be permitted in the Residential Zone only if they meet all of the following conditions:

- A) Home businesses shall have no discernable impact on the surrounding residential neighborhood
- B) Prior to the commencement of operations, home businesses must receive a Conditional Use Permit and Site Plan approval from the Planning Board.
- C) Before granting a Conditional Use Permit, the Planning Board must determine that the proposed structure(s), location, and size of the parcel are of a suitable scale, appearance, and character that are compatible with the surrounding neighborhood. The structure(s) must maintain the appearance of a residence.
- D) The principal operator must reside on the premises.
- E) No more than one (1) home business may be established on a property.
- F) No more than fifty percent (50%) of floor space of buildings on the premises can be devoted to such use.
- G) The home business may be conducted in a pre-existing accessory building which may utilize up to one hundred percent (100%) of said building's floor area.
- H) There shall be no display of goods, wares, or storage of materials visible from the public way or shoreline or abutting residences. Outdoor storage of materials or equipment is not permitted unless specifically approved by the Planning Board. Outdoor storage:
 - a. Shall be at least fifty (50) feet from all lot lines
 - b. Shall be screened with fencing or a vegetative buffer.
- I) Signs shall meet the requirements of the Newington Zoning Ordinance.
- J) A limited number of commercial vehicles related to the home business may be stored on the premises. The number and size of the commercial vehicles is subject to approval by the Planning Board.

- K) Customer parking generated by the home business shall be off the street, and the vehicles shall be subject to the zoning setbacks for structures. A total of 4 customer parking spaces are permitted on conforming lots. The number of parking spaces for non-conforming lots shall be determined by the Planning Board.
- L) The building or premises containing the home business shall not be detrimental to the residential character of the neighborhood due to its exterior appearance. There shall be no emission of odor, smoke, dust, vibration, noise or detectable tones.
- M) No equipment or process shall be used that creates visual or audible interference in any cell phone, wireless LAN, radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- N) Bandwidth consumption or denial of service to the publicly accessed information infrastructure (coaxial, fiber, wired or wireless) must not be perceptible at the lot line at a higher level than is customary in a residential neighborhood.
- O) Water consumption shall be no more than is normal in a residential neighborhood.
- P) On-site storage of hazardous materials other than small quantities of products that are intended for normal household use shall be subject to approval by the Newington Fire Chief.
- Q) A certificate of occupancy is required prior to the commencement of business operations.

SECTION 4 - Permitted Home Businesses: The following are permitted subject to the conditions specified in Section 3 above: light distribution, painter, architect, plumber, carpenter, electrician, building contractor, hair dresser, landscaper, all home occupations listed in Section 2 above, and any similar use, provided that the Planning Board, after a public hearing, finds that all of the conditions in Section 3 are satisfied.

Article XV - *Lighting & Illumination*

SECTION 1 – Purpose: This article is intended to eliminate problems of glare, minimize light trespass and obtrusive light created by improperly designed and installed outdoor lighting. Further purposes are to enhance and protect the quality of the New Hampshire night sky, Newington’s rural character, and conserve energy and resources. These concerns are balanced while maintaining safety, security and productivity by establishing limits for the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination in the Town of Newington.

SECTION 2 – Prohibitions: This section applies to all lighting within the Town of Newington on any site except for legal non-conforming uses and temporary or emergency lighting.

A - Mercury Vapor Lamps Fixtures and Lamps. The installation of any mercury vapor fixture or lamp for use as outdoor lighting is prohibited.

B - Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment is prohibited.

C - Searchlights. The operation of searchlights for advertising purposes is prohibited.

D - Neon or Tubular Gas. Neon or tubular gas lighting shall be limited to signage use and must be located within the exterior dimension of the sign as approved under Article XI of this ordinance. Neon or tubular gas lighting as architectural accents is prohibited.

E - Pulsating, flashing, rotating, oscillating, or attention getting lights. Pulsating, flashing, rotating, oscillating, or other type of lighting intended as an attention getting device shall be prohibited. Oscillating lighting is lighting that changes intensity or color in less than 30 seconds.

SECTION 3 - Residential Lighting: These provisions are intended to prevent private and public nuisances and protect property values. This section applies to existing and proposed single-family and duplex residential uses.

A - Spot lights, floodlights and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property.

B - Accent lighting, low wattage seasonal lighting and other fixtures commonly associated with residential uses are not intended to be prohibited by this ordinance.

SECTION 4 - Non-residential: These provisions are intended to provide for more comprehensive lighting regulations due to potential negative impact on a greater number of residents and the public from inappropriate lighting installation or fixtures. In addition, it is the intent of these restrictions to prevent lighting conflicts and competing lighting installations - particularly in the commercial, office and industrial districts of the Town of Newington. This section applies to non-residential uses. The Planning Board shall adopt regulations as part of the Site Plan Review Regulations that implement the purpose and intent of this ordinance.

A - A Building Permit shall be required prior to the installation of any new fixtures on existing non-residential uses. If the original Site Plan Approval granted by the Planning Board specified, in detail, the type and nature of lighting, any increase or change in lighting that may have an increased impact on the site shall be referred to the Planning Board for Site Plan Review. The Building Official shall approve a permit for other installations upon a finding that the fixtures comply with the following general lighting requirements.

B - Spotlights, flood lights, and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property. Security lighting using motion detection switches are encouraged, but continual lighting must be angled or shielded in such a fashion as to not produce glare onto neighboring property, particularly dwelling units.

C - General Lighting Requirements:

- (1) All lighting in the Town of Newington is required to have full-cutoff shielding, except for that portion of lighting installation that is consistent with the Historic District.
- (2) The new installation of up-lighting, by any method, is limited to the use of upward landscape or flagpole lighting, provided the lighting does not interfere with the safe operation of aircraft or spill onto neighboring properties or public ways.
- (3) Non-cutoff wallpack type fixtures are prohibited.
- (4) Existing lighting sources that do not present a health and safety issue with respect to glare on public ways or nuisance as a result of off-site illumination shall be exempt from the provisions of this ordinance.

D - New fixtures accompanying establishment of new uses or change of use that requires Site Plan Review shall have lighting plans approved as part of the Site Plan Review process.

SECTION 5 - Grandfathering of Non-conforming Lighting: Any lighting that replaces a grandfathered lighting, or that is moved, must meet the standards of this ordinance. Non-conforming lighting for advertising signs or architectural accents is grandfathered only for a period of ten years and no later than January 1, 2017. Grandfathered lighting that directs light toward streets or parking lots that cause disability glare to motorists or cyclists shall be either shielded or re-directed within 90-days of notification so that the lighting does not cause a potential hazard to motorists or cyclists.

SECTION 6 – Exceptions: All temporary lighting required for construction projects, related to road construction and repair, installation of sewer and water facilities, and other public infrastructure, all temporary emergency lighting needed by the police and fire departments or other emergency services, as well as vehicular luminaries, all hazard warning lights required by Federal regulatory agencies, and seasonal and decorative lighting displays using multiple low wattage bulbs.

Article XVI- Small Wind Energy Systems

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

SECTION 2 – Procedure for Review:

A - Location: Small wind energy systems and met towers are an accessory use that is permitted in all zoning districts.

B - Building Permit: No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Meteorological (Met) towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

C - Application: Applications submitted to the building inspector 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 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.

D - Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

SECTION 3 – Standards: The building inspector shall evaluate the application for compliance with the following standards;

A - 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.

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
- ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

Minimum Setback Requirements Indicated as a % of Tower Height			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	150%	110%	150%

B - Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

C – The Sound Level of the small wind energy system shall not be discernible at the property line.

D - Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

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

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

G - Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

H - Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner’s access to the optimal wind resources on the property.

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

I - Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

J - Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

K - Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

L - Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

M - Impact on Wildlife: Only wind energy system models that have a minimal negative impact on birds, said impact as determined by the Newington Planning Board, shall be permitted.

SECTION 4 – Abandonment:

A – Notification: At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

B – Removal: Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. “Physically remove” shall include, but not be limited to:

- i) Removal of the wind generator and tower and related above-grade structures.
- iii) 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 – Failure to Notify: In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

D – Legal Action: If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner’s sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner’s expense.

SECTION 5 – 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.

SECTION 6 – 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 NH Revised Statutes Annotated Chapter 676:

ARTICLE XVII - *Administration*

SECTION 1 - Zoning Enforcement: The Board of Selectmen are responsible for the proper enforcement of the Newington Zoning Ordinance. The Board of Selectmen have delegated the day to day responsibilities for enforcement to the Town's Building Inspector. The Town's Building Inspector shall be the responsible local official regarding the enforcement of the Town of Newington Zoning Ordinance as specified in NH RSA 676:17-a. In discharging such duties, the Town's Building Inspector will consult with the Town Planner when necessary.

SECTION 2 - Building Permit Required: No building or structure shall be erected, added to, or moved, until a permit has been issued by the Building Inspector. The Town's Building Inspector shall have the authority to require a certified foundation plan and a certified plot plan, when in his opinion, such documentation is necessary. The Building Inspector may exercise this authority when there is a concern regarding the building's proximity to side, rear and front setbacks, wetlands, floodplain, shoreline and other sensitive areas.

SECTION 3 - Application for Building Permit: The applicant for a Building Permit shall submit accurate construction plans at a suitable scale. Industrial plans shall be drawn by a professional architect or professional engineer, and shall include:

- A - The shape, size and location of the lot to be built upon; and
- B - The shape, size, height and location upon the lot of the buildings to be erected, altered or removed; and
- C - Any building already on the lot; and
- D - Setback lines of buildings on adjoining lots; and
- E - Any other information needed by the Building Inspector or Board of Select-men to determine whether the provisions of this ordinance are being observed.

The applicant for a building permit shall complete the building within eighteen (18) months after the issuance of the building permit. An extension for up to one (1) year may be granted for a good cause. This amendment shall apply retrospectively to building permits that have been issued for work that has not been completed.

If the application conforms with the provisions of this ordinance, the building codes, and other ordinances of the municipality, the permit shall be issued upon payment of the required fee. If not, the building permit shall be refused by the Building Inspector stating such refusal in writing with the cause. The issuance or refusal of a permit shall be within 15 days of the submission of the application with all necessary information to the Building Inspector.

No permit shall be issued for construction of storage facilities for any petroleum products unless such construction complies with the Rules and Regulations of the State Board of Fire Control. The Newington Fire Chief and/or State Fire Marshall shall inspect such construction to determine that said regulations are being adhered to.

If no substantial progress of construction has been made in six months beginning with the date the permit is issued, the permit becomes invalid. The Building Inspector may renew the permit. A renewal fee in the amount of the original fee is required to be paid by the applicant before the permit is renewed.

SECTION 4 - Penalties for Violation:

Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty of \$275 for the first offense, and \$550 for subsequent offenses, for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. Each day that a violation continues shall be a separate offense. See NH RSA 676:17, I.

SECTION 5 - Repeal of conflicting ordinances: Any existing zoning ordinances or such parts thereof as may be inconsistent herewith are repealed.

SECTION 6 – Zoning Board of Adjustment:

The Zoning Board of Adjustment shall consist of five members appointed by the Board of Selectmen with a term of three years. Terms shall begin in March. The Board of Selectmen shall also appoint up to five alternates. Alternates shall serve in the absence of a regular member. The Zoning Board of Adjustment shall have the following powers:

A. Administrative appeals. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance.

1. In exercising these powers, the Zoning Board of Adjustment may reverse or affirm, wholly or in part, 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 administrative official from whom the appeal is taken.

2. The concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

B. Variances. Authorize upon appeal in specific cases such variance from the terms of the zoning

ordinance as provided for in RSA 674:33, I(b).

C. Special exceptions.

1. Authorize special exceptions to the terms of the ordinance for uses specifically identified in the Table of Uses. The Board may grant such special exceptions in appropriate cases and subject to appropriate conditions so as to be in harmony with the general purpose and intent of the Zoning Ordinance. In granting a special exception, the Board's shall apply the following standards:

1. No detriment to property values in the vicinity of the proposed development will result on account of the location or scale of buildings, structures, parking areas, or other access points; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles, or other materials.
2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.
3. No creation of a traffic safety hazard or substantial traffic congestion in the vicinity of the proposed development.
4. No excessive demand on municipal services and facilities, including but not limited to waste disposal, police and fire protection, and schools.
5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection.
6. Adequate and appropriate facilities will be provided for the intended use.

D. Waivers of dimensional requirements. Authorize upon appeal in specific cases equitable waivers of dimensional requirements as provided for in RSA 674:33-a.

E. Variances for persons with disabilities. The Zoning Board of Adjustment may grant a variance from the terms of the Zoning Ordinance pursuant to RSA 674:33, V, without finding a hardship arising from the condition of the property subject to the ordinance, when reasonable accommodations are necessary to allow a person with a recognized physical disability to reside in or regularly use the premises. In granting a variance pursuant to RSA 674:33, V, the Zoning Board may provide that the variance shall survive only so long as the particular person has a continuing need to use the premises.

SECTION 6 - Validity: Should any section or part of a section or any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 7 - Effective Date: This Ordinance shall take effect upon its passage.

ARTICLE XVIII - *Floodplain Management*

Item I – Purpose

1. Certain areas of the Town of Newington, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Newington, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in the Floodplain Management Ordinance.
2. This Ordinance established a permit system and review procedure for development activities in the designated flood hazard areas of the Town of Newington, New Hampshire.

Item II – Establishment

1. This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Newington Floodplain Management Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Newington Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law.
2. 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 Rockingham, N.H." dated May 17, 2005, together with the associated Flood Insurance Rate Maps dated May 17, 2005, which are declared to be a part of this ordinance and are hereby incorporated by reference, and any subsequent revisions thereto.

Item III – Greater Restriction

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.

Item IV – Enforcement

It shall be the duty of the Building Inspector to enforce and administer the provisions of this ordinance in accordance with RSA 676.

Item V - Definition of Terms: The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Newington.

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Newington subject to a one-percent or greater possibility of flooding in any given year. The area is designated as **Zone A and Zone AE on the FIRM.**
2. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. "Base flood elevation" means the water surface elevation having a one percent possibility 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 areas from:
 - A - the overflow of inland or tidal waters, or
 - B - the unusual and rapid accumulation or runoff of surface waters from any source.
9. "Flood Insurance 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 the official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Newington.
11. "Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
12. "Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real

property, water and sanitation facilities, structures and their contents.

13. "Floodway" - see "Regulatory Floodway".

14. "Functionally dependent use" means a use that 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.

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

16. "Historic Structure" means any structure that is:

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

b. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

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.

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

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

manufactured home park or subdivision.

19. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

20. "Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

22. "Recreational Vehicle" is defined as:

- i) built on a single chassis;
- ii) 400 square feet or less when measured at the largest horizontal projection;
- iii) designed to be self-propelled or permanently towable by a light duty truck; and
- iv) designed primarily **not** for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

23. "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 increasing the water surface elevation more than a designated height.

24. "Special flood hazard area" (See "Area of Special Flood Hazard").

25. "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.

26. "Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any

work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations 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.

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

28. "Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:

1. the appraised value prior to the start of the initial repair or improvement, or
2. in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures that 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".

29. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

30. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Item VI - Permits:

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

Item VII - Construction Requirements:

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe

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

- a. 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,
- b. be constructed with materials resistant to flood damage,
- c. be constructed by methods and practices that minimize flood damages,
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item VIII - Water and Sewer Systems:

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

Item IX - Certification:

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

- a. the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. if the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed.
- c. any certification of floodproofing.

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

Item X - Other Permits:

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

Item XI - Watercourses:

1. 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 Environmental Services Department and submit copies of such notification to the Building Inspector, 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 Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.

2. The applicant shall submit to the Building Inspector; certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

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

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

4. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone 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 more than one foot at any point within the community.

Item XII - Special Flood Hazard Areas:

1. In special flood hazard areas the Building Inspector shall determine the base flood elevation in the following order of precedence according to the data available:

a. In Zones refer to the elevation data provided in the community's Flood Insurance Study and accompanying **FIRM**.

b. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

c. In Zone A where the base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

2. The Building Inspector's base flood elevation determination will be used as criteria for requiring in zones A and AE, that:

a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation.

b. All new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; **or**, together with attendant utility and sanitary facilities, shall:

(i) be floodproofed so that below the 100-year base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

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

(i) be on the site for fewer than 180 consecutive days;

(ii) be fully licensed and ready for highway use; or

(iii) meet all standards of Item VI of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Item XII(2)(c) of this ordinance.

e. 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;

(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 openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Item XIII - Variances and Appeals:

1. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
 - a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - b. 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. the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
 - a. The issuance of a variance to construct below the base flood level will result in increase premium rates for flood insurance up to amounts as high as \$25 for \$100 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. 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.