

ARTICLE VII. CONDITIONAL USES

DIVISION 1. GENERALLY

Sec. 78-1236. Scope.

The planning board shall have the power to hear and decide only those conditional uses which are authorized by this chapter and which are specifically listed as conditional uses.

(Ord. of 9-18-2001, § 11)

Sec. 78-1237. Authority.

The planning board shall approve or approve with conditions all applications for conditional uses if it determines that the proposed conditional use meets all of the standards set forth in section 78-1240 and complies with all other applicable sections of this chapter or can be made to comply with the standards of section 78-1240 by the imposition of conditions as provided for under division 2 of this article. If the planning board determines that the proposed use does not meet one or more of the standards of division 2 of this article and cannot be made to comply by the imposition of conditions or if conditions that would cause the use to comply with the required standards are not acceptable to the applicant, the board shall deny the application. Proposed expansions to conditional uses shall be reviewed by the planning board and shall be in compliance with this article.

(Ord. of 9-18-2001, § 11.1)

Sec. 78-1238. Application and review process.

- (a) *Application.* Application for conditional uses shall be filed with the planning board on forms provided for that purpose and shall be accompanied with appropriate fees as specified in the schedule of license, permit and application fees in appendix A of this Code. The applicant shall provide all information required by the planning board to make its findings of fact as to each of the standards set forth in section 78-1240.
- (b) *Review process.* The review process is as follows:
 - (1) *Determination of complete application.* Applications will be reviewed for their classification and completeness at the next regularly scheduled meeting of the planning board. If a conditional use review application is determined by the planning board to contain all relevant information necessary to make a reasonable and informed decision, the planning board shall designate the application as a complete application. Conversely, if the application is lacking data required by the planning board, the applicant shall provide the requested information before the application is designated as being complete. Applications failing to be designated as a complete application within six months from the date of submission to the planning board shall be denied by the board.
 - (2) *Public hearing.* Within 30 days of designating a conditional use application as a complete application, the planning board shall conduct a public hearing, during which abutters to the proposed project and any other members of the public shall have an opportunity to express their opposition or support for

the proposed project. Notification of this public hearing shall be sent to all property owners within a 100-foot radius of the applicant's property line, a minimum of ten days prior to the hearing.

- (3) *Site walk.* At any time during the review of the application, the planning board may conduct a site walk. The site walk shall be a legally advertised planning board meeting, at which time the board, representatives of the applicant, and any other interested parties will examine the proposed project site.
- (4) *Conditional use review ruling.* Within 60 days of the public hearing, the planning board shall either approve, approve with conditions, or deny the application based on the application's conformance with the applicable performance standards and regulations of this chapter. At the time of decision, the planning board will issue findings of fact documenting the application's compliance or noncompliance with the standards of section 78-1240 and all other standards established in this article, article VIII of this chapter, and other relevant sections of this chapter.

(Ord. of 9-18-2001, § 11.2)

Sec. 78-1239. Appeals.

Decisions of the planning board on conditional use applications are not appealable to the town board of appeals, but may be appealed to the superior Court pursuant to M. R. Civ. P. 80(b).

(Ord. of 9-18-2001, § 11.7)

Sec. 78-1240. Standards.

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards:

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.
- (2) The proposed use will not create or increase any fire hazard.
- (3) The proposed use will provide adequate off-street parking and loading areas.
- (4) The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.
- (5) The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.
- (6) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.
- (7) The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.
- (8) The proposed use will not adversely affect the value of adjacent properties.
- (9) The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

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- (10) The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.
 - (11) The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.
 - (12) The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

(Ord. of 9-18-2001, § 11.3)

Secs. 78-1241—78-1265. Reserved.

DIVISION 2. CONDITIONS

Sec. 78-1266. Authority.

Upon consideration of the standards listed in section 78-1240, the planning board may attach such conditions as it finds necessary to ensure compliance with those standards and all other applicable requirements of this chapter. Such conditions may include but are not limited to specifications for type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; hours of operation; operation controls; professional inspection and maintenance; sureties; location of piers, docks, parking and signs; and types of construction. Violation of any conditions of approval shall be a violation of this chapter.

(Ord. of 9-18-2001, § 11.4)

Sec. 78-1267. Home occupations.

The purpose of the home occupation provision is to permit the conduct of only those businesses that are reasonably compatible with the residential districts in which they are located. Home occupations shall comply with the following conditions:

- (1) The occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling or within a building or other structure accessory thereto.
- (2) The occupation or profession shall be carried on by household members occupying the dwelling unit and one nonresident employee.
- (3) There shall be no exterior display, no exterior sign except as expressly permitted by division 5 of article VIII of this chapter, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- (4) No nuisance shall be generated, including but not necessarily limited to offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or parking.
- (5) The traffic generated by such home occupation shall not increase the volume of traffic so as to create a traffic hazard or disturb the residential character of the immediate neighborhood.

In addition to the off-street parking provided to meet the normal requirements of the residential use, adequate off-street parking shall be provided for the vehicles of the users of the home occupation. No

more than two parking spaces serving the home occupation shall be permitted. Such off-street parking shall not be located within any required front yard areas and shall be screened from abutting properties.

- (6) No retail sales shall be permitted, except those sales which are incidental to the services provided by the home occupation.
- (7) The home occupation may utilize:
 - a. Not more than 20 percent of the dwelling unit floor area, provided that for the purposes of this calculation unfinished basement and attic spaces are not included.
 - b. Unfinished attic and basement spaces
 - c. One accessory structure. The floor area utilized in the accessory structure shall not exceed 50 percent of the total floor area of the dwelling unit as previously calculated.
- (8) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation.
- (9) There shall be no alteration to the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.
- (10) A single sign identifying the name, address, and profession of a permitted home occupation or a lawfully existing nonconforming home occupation is permitted, provided such sign is nonilluminated and does not exceed two square feet. Freestanding signs shall not exceed six feet in height and shall be located on the principal property. Wall-mounted signs shall be located on the principal building and shall not extend beyond the first story.
- (11) The following uses shall not be operated as home occupations:
 - a. Facilities for the repair of motor vehicles.
 - b. Automobile towing services.

(Ord. of 9-18-2001, § 11.5.1)

Cross reference(s)—Businesses, ch. 18.

Sec. 78-1268. Child care facilities.

- (a) All child care facilities, family day care homes, group day care homes, day care center facilities, and nursery schools shall comply with the following conditions:
 - (1) Required play areas for children shall be permitted in rear and side yards only.
 - (2) All play areas shall be enclosed by a fence 48-inch in height above finished grade. Fence gates shall be latched at the top.
 - (3) Day care facilities are prohibited in multifamily housing units.
 - (4) Individual child care facilities shall be situated no closer to another child care facility than five times the minimum frontage requirement for the zoning district within which the proposed facility is located.
 - (5) Off-street parking shall be provided as follows: One parking space per each nonresident employee and a minimum of one parking space per every four children, or portion thereof, of the total number allowed under the state license.
- (b) All child care facilities, family day care homes, group day care homes, day care center facilities and nursery schools shall comply with the following conditions, if applicable:

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- (1) Family day care homes not subject to inspection by the state fire marshal's office shall request an inspection and written report by the local fire inspector's office determining that there are no fire safety hazards present in the home. If fire safety hazards are found to exist, the applicant shall comply with the recommended corrective actions prior to the issuance of a statement of compliance by the code enforcement officer.
 - (2) Group day care homes, day care facilities and nursery schools shall comply with the following conditions:
 - a. Reserved.
 - b. Such facilities shall be permitted only on lots that fully comply with the minimum lot and frontage requirements of the zoning district within which they are located, except that state-licensed facilities existing on the effective date of the ordinance from which this chapter derives shall be allowed to continue upon demonstration of an existing license active. If the use ceases for any reason, for a period of 12 months, any subsequent use of the property shall conform to the regulations specified in the zoning district where the property is located.

(Ord. of 9-18-2001, § 11.5.2; Ord. of 10-16-2012(2))

Sec. 78-1269. Private schools.

Private schools, exclusive of private business or trade schools, shall comply with the following conditions:

- (1) The lot shall be a minimum of one acre.
- (2) The lot shall be enclosed by an effective fence or vegetative screen, a minimum of four feet in height.
- (3) Lot coverage shall not exceed 30 percent of the lot area.

(Ord. of 9-18-2001, § 11.5.3)

Sec. 78-1270. Installations of public/private utility facilities.

Public utility installations shall comply with the following conditions:

- (1) There shall be no overnight parking of vehicles or machinery, except in an enclosed building.
- (2) There shall be no emission of noise or electronic vibration or radiation detectable beyond the premises.
- (3) No building or structure in excess of 80 square feet shall be located within 50 feet of a residential lot line.
- (4) Off-street parking areas shall be screened by an effective fence or vegetative screen from abutting residential properties.

(Ord. of 9-18-2001, § 11.5.4)

Sec. 78-1271. Cemeteries.

- (a) Cemeteries, mausoleums, vaults, mortuaries, and columbarias shall be set back a minimum of 50 feet from the front property line.
- (b) Memorial gardens shall be set back a minimum of 15 feet from the property line.

Sec. 78-1272. Housing opportunity program.

1. *Purpose.* The purpose of this section is to meet the requirements of the State of Maine Housing Opportunity Program to allow for the following:
 - A. Additional density for affordable housing developments in certain areas (affordable housing density bonus);
 - B. Multiple dwelling units on lots designated for housing (dwelling unit increase allowance); and
 - C. Dwelling units created under this section shall not be used for short-term rentals.
2. *Applicability.* The regulations in this ordinance apply to any affordable housing development or dwelling unit proposed to be developed under the housing opportunity program, except as otherwise outlined in this section.
 - A. Affordable housing developments and dwelling units proposed under this section shall not be allowed to be developed on nonconforming lots, within nonconforming structures, or on lots/structures with nonconforming uses.
 - B. Affordable housing developments and dwelling units created under this section must meet all other applicable federal, state, and local, laws, codes, ordinances, and regulations.
 - C. This section does not:
 - 1) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in the state rule, as long as the agreement does not abrogate rights pursuant to the United States Constitution or the Constitution of Maine;
 - 2) Exempt a subdivider from the requirements in Title 30-A, Chapter 187, subchapter 4;
 - 3) Exempt an affordable housing development or dwelling units from the shoreland zoning requirements established by the Department of Environmental Protection pursuant to Title 38, Chapter 3 and local shoreland zoning ordinances; or
 - 4) Abrogate or annul minimum lot size requirements under Title 12, Chapter 423-A.
3. *Definitions exclusive to the housing opportunity program.* As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in this chapter. Terms not listed below have the same meanings as in section 78-1 of this chapter.

Accessory dwelling unit: a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land.

Affordable housing development:

1. For rental housing, a development in which a household whose income does not exceed 80 percent of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51 percent or more of the units in the development without spending more than 30 percent of the household's monthly income on housing costs; and
2. For owned housing, a development in which a household whose income does not exceed 120 percent of the median income for the area as defined by the United States Department of

Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51 percent or more of the units in the development without spending more than 30 percent of the household's monthly income on housing costs.

3. For purposes of this definition, "housing costs" include, but are not limited to:
- a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and
 - b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

Area median income: The midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing and Urban Development.

Attached: Connected by a shared wall to the principal structure or having physically connected finished spaces.

Base density: The maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

Centrally managed water system: A water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, Rules Relating to Drinking Water. This water system may be privately owned.

Certificate of occupancy: The municipal approval for occupancy granted pursuant to 25 M.R.S. § 2357-A or the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

Comparable sewer system: Any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules.

Comprehensive plan: A document or interrelated documents consistent with 30-A M.R.S. § 4326(1)—(4), including the strategies for an implementation program which are consistent with the goals and guidelines established pursuant to Title 30-A, Chapter 187, Subchapter II.

Density requirements: The maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

Designated growth area: The area that is designated in a comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten years is directed.

Dimensional requirements: Numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage, road frontage, building coverage, lot coverage and height.

Duplex: A structure containing two dwelling units.

Dwelling unit: Any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

Existing dwelling unit: A dwelling unit in existence on a lot at the time of submission of a permit application to build an additional unit on that lot

Housing: Any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. For purposes of this section, this does not include dormitories, boarding houses or other similar types of housing units. This also does not include transient housing or short-term rentals, unless these uses are otherwise allowed in local ordinance.

Land use ordinance: An ordinance or regulation of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for those uses.

Lot: A single parcel of developed or undeveloped land.

Multifamily dwelling: A building containing three or more dwelling units.

Potable: Safe for drinking as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table and Maine's interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants.

Principal structure: A structure in which the main or primary use of the lot is conducted. For purposes of this section, principal structure does not include commercial buildings.

Quadplex: A structure containing four dwelling units specific to the dwelling unit increase allowance in section 78-1272.

Restrictive covenant: A provision in a deed, or other covenant conveying real property, restricting the use of the land.

Setback requirements: The minimum horizontal distance from a lot line to the nearest point of a structure.

Short-term rental: Any building or structure, or portion thereof, that is offered or provided to a guest or guests to be used for living or sleeping for a fee for less than 30 consecutive days, with the exception of motels, hotels, bed and breakfast, inn's, overnight cabins, and campgrounds. Short-term rental units may be whole house, duplexes, multifamily, apartments, condominiums, condominium hotels/motels, and individual rooms or individual units in homes, duplexes, multifamily, apartments, condominiums, and condominium hotels/motels.

Single-family dwelling unit: A detached residence designed for or occupied by one family only. Only one such single-family dwelling shall be permitted per lot.

Structure: Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons as defined in 38 M.R.S. § 436-A(12).

Triplex: A structure containing three dwelling units specific to the dwelling unit increase allowance in section 78-1272.

Zoning ordinance: A type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

4. *Housing opportunity program performance standards.* The housing opportunity program performance standards below apply to any dwelling units created under section 78-1272:

- A. *Water and wastewater requirements.* The owner of a proposed affordable housing development or dwelling units shall provide written verification that the affordable housing development or dwelling units are connected to adequate water and wastewater services prior to certification of the structure for occupancy. Written verification must include the following:

- 1) If an affordable housing development or dwelling unit is connected to a public sewer system, proof of adequate service to support any additional flow created by the unit(s) and proof of payment for the connection to the sewer system;
- 2) If an affordable housing development or dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. § 4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. ch. 241, Subsurface Wastewater Disposal Rules.
- 3) If an affordable housing development or dwelling unit is connected to a public water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- 4) If an affordable housing development or dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. ch. 10, section 10.25(J), Land Use Districts and Standards. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

B. *Parking.* Parking shall be provided as follows for units created under the housing opportunity program:

Housing Opportunity Program unit type	Parking requirement
Affordable Housing Development	Minimum of two (2) off-street parking spaces for every three (3) dwelling units. The number of parking spaces required shall be rounded up to the nearest whole number.
Dwelling unit increase allowance	Minimum number of off-street parking spaces as required by Ch. 78 Zoning.

C. *Addressing.* The applicant shall show the road name(s) and address on the plan after consultation and approval by the town assessor, prior to any approval. The road name(s) and address shall be used for the purpose of E-911 addressing.

5. *Affordable housing density bonus.* The affordable housing density bonus allows a density bonus for certain affordable housing developments approved on or after January 1, 2024, as outlined below:

A. *Eligibility for affordable housing density bonus.* For purposes of the affordable housing density bonus an applicant/owner shall demonstrate that the development:

- 1) Is an affordable housing development as defined in this section, which includes the requirement that a majority of the units are affordable;
- 2) Is in a designated growth area pursuant to 30-A M.R.S. § 4349-A(1)(A) or (B) or served by a public or other centrally managed water system and a public or other comparable sewer system;
- 3) Is located in an area in which multifamily dwellings are allowed, as described in Chapter 78, Article VI—Districts;
- 4) Complies with minimum lot size requirements in accordance with Title 12, Chapter 423-A.
- 5) Meets the zoning district space and bulk requirements, except for the density bonus provided pursuant to this section.

B. *Long-term affordability.* Prior to granting a certificate of occupancy or other final approval of an affordable housing development, the owner of the affordable housing development shall execute a restrictive covenant that is enforceable by a party acceptable to the Town, to be decided at the time of

planning board approval; and record the restrictive covenant in the appropriate registry of deeds to ensure that for at least 30 years after completion of construction:

- 1) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80 percent of the local area median income at the time of initial occupancy; and
 - 2) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120 percent of the local area median income at the time of initial occupancy.
- C. *Density bonus for affordable housing.* If the requirements for eligibility for density bonus outlined under the affordable housing density bonus above are met, the following density bonuses are allowed:
- 1) An affordable housing development can have a dwelling unit density of 2.5 times the base density of the zoning district in which the lot is located; and
 - 2) If fractional results occur when calculating this density bonus, the number of units is rounded down to the nearest whole number.
6. *Dwelling unit increase allowance.* The dwelling unit increase allowance allows for multiple dwelling units on lots where housing is allowed beginning on January 1, 2024, subject to the requirements below:
- A. *Applicability.*
- 1) If more than one dwelling unit or an ADU has been constructed on a lot as a result of this allowance pursuant to section 78-1272 or section 78-1383, the lot is not eligible for any additional units or increases in density. The planning board will determine if a dwelling unit or accessory dwelling unit has been constructed on the lot.
 - 2) If a dwelling unit(s) in existence as of January 1, 2024 is torn down, resulting in an empty lot, for the purpose of the dwelling unit increase allowance in this section, the lot shall be treated as if the unit still existed, unless prior authorization for the demolition and dwelling unit increase allowance is given by the planning board, in which the board will determine the maximum number of dwelling units allowed, not to exceed the allowances in this section.
 - 3) Dwelling units proposed under this section need to meet the Ch. 78, Article VIII, Performance Standards for Multifamily housing which includes access standards, landscaping, and buffering requirements.
- B. *Dimensional and setback requirements.* Proposed dwelling units pursuant to section 78-1272 shall meet the space and bulk requirements for the zoning district in which the lot is located.
- C. *Maximum number of units allowed under dwelling unit increase allowance.* A lot with a single-family dwelling and an ADU will be considered two residential dwelling units for the purpose of determining the number of existing residential dwelling units on a lot.
- 1) The number of units allowed under the dwelling unit increase allowance are listed in the table below:

Number of existing residential dwelling units on lot in area in which housing is allowed	Max number of dwelling units	
	Lot in designated growth area	Lot outside designated growth area
0	Up to Four (4), with no more than one single-family structure allowed. Under this section the	Up to Two (2) within one structure or as two separate structures

	structure arrangement can include duplexes, a triplex, or a quadplex.	
1	Up to Two (2) additional: one within or attached to existing structure, one detached from existing structure, or one of each	
2	Zero (0)	

(Ord. of 9-18-2001, § 11.5.6; Ord. of 6-18-2019; Ord. of 2-6-2024)

Sec. 78-1273. Contractor storage yard 2.

- (a) A contractor storage yard 2 may be permitted in the rural district, provided the following conditions are met to the satisfaction of the planning board:
 - (1) Driveway entrances from the street to parking and storage areas shall not be located within 100 feet of any adjacent residential property.
 - (2) All parking and storage areas shall be visually blocked from both the street and abutting properties by a solid fence, earth barrier, and/or vegetative planting that at the time of installation shall not be less than ten feet in height.
 - (3) Any storage yard illumination shall consist of shielded downlight fixtures and shall not shed more than 0.1 footcandle at the property line.
 - (4) All materials likely to produce odors, dust, or debris shall be contained within a closed structure.
- (b) Storage yards shall be permitted only on parcels supporting a single-family detached dwelling or a duplex, and the storage area and/or associated accessory structures must be located in the rear yard area of the residential unit yard.

(Ord. of 9-18-2001, § 11.5.7)

Sec. 78-1274. Automotive or boat sales, service and/or repair.

Automotive or boat sales, service and/or repair facilities may be permitted where allowed as a conditional use, provided the following conditions are fulfilled to the satisfaction of the planning board:

- (1) Sales display and retail customer parking areas shall be permitted in the front yard setback provided that a 15-foot in depth, curbed buffer strip is constructed between the street curb and the parking/display areas and planted in accordance with requirements as established by the planning board.
- (2) Vehicle, equipment, and material storage areas, not directly associated with sales displays, shall be located in the side or rear yard of the property and shall be visually blocked from both the street and abutting properties by a solid fence, earth barrier, and/or vegetative planting that at the time of installation shall not be less than six feet in height.
- (3) Properties abutting a residential use shall not install parking, loading, material storage, or equipment storage facilities within ten feet of the side or rear property line.
- (4) Freestanding signage containing the stock logo of a vehicle manufacturer shall not exceed 40 square feet in area and shall be no taller than 20 feet in height.
- (5) Any storage yard illumination shall consist of shielded downlight fixtures and shall not shed more than 0.2 footcandle at the property line.

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- (6) Effective measures for the storage, control, and disposal of all fuels, lubricants, and grease/fuel byproducts shall be provided in accordance to standards established by the department of environmental protection.

(Ord. of 9-18-2001, § 11.5.8)

Sec. 78-1275. Adult business.

Adult businesses may be permitted in the GB-1 district, provided the customer entrance to the adult business is no closer than 1,000 linear feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:

- (1) Occupied by a licensed day care facility, school, park, playground, church, or public building; or
- (2) Occupied by another adult business.

(Ord. of 9-18-2001, § 11.5.9)

Sec. 78-1276. Mineral extraction.

All mineral extraction standards shall comply with the performance standards of section 78-1240 and division 9 of article VIII of this chapter.

(Ord. of 9-18-2001, § 11.5.10)

Sec. 78-1277. Medical marijuana.

The cultivation, processing, storage, sale and distribution of medical marijuana through operation of medical marijuana dispensaries, caregiver retail stores, manufacturing facilities, and testing facilities is not allowed as a permissible, conditional or complimentary use within any zoning district excepting individual medical marijuana primary caregivers who operate in conformance with applicable Maine rules and laws. As an accessory use, individual medical marijuana primary caregivers shall be allowed in any medical marijuana caregiver's primary year-round residence in every base zone and overlay zone, without any requirement for land use permitting.

(Ord. of 8-4-2015(2); Ord. of 11-1-2022)

Sec. 78-1278. Solar energy systems.

- (1) *Purpose.* The purpose of these solar energy system regulations is to promote reduced dependence on nonrenewable energy sources, to design solar energy systems in a manner that minimizes impacts on adjacent properties and to promote systems that are visually compatible with the character of the areas in which they are located and that are not detrimental to public health, safety and welfare.
- (2) *Applicability.*
 - a. The regulations in this section shall apply to all small, medium and large solar energy systems modified or installed after the date of adoption of this ordinance.
 - b. Any modification, upgrade or structural change that materially alters the size, placement or output of an existing solar energy system shall comply with this ordinance.
 - c. All solar energy systems shall be designed, erected and installed in accordance with all applicable local, state and federal codes, regulations and standards.

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- (3) *Definitions.* As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in this chapter. Terms not listed below have the same meanings as in section 78-1 of this chapter.

Solar collector: A device, such as a solar PV cell or a solar thermal collector, that absorbs solar radiation from the sun and transforms it into electricity or heat.

Solar energy system: Any active solar energy system which uses mechanical, physical, or chemical means to convert energy collected from sunlight into an alternative form of energy. Solar energy systems include photovoltaic cells, solar hot water heaters, etc.

Solar energy system, building-integrated photovoltaic (BIPV): Any solar energy system that consists of photovoltaic cells and/or panels which are fully integrated into the exterior structure of a building.

Solar energy system, building mounted photovoltaic: Any solar energy system that consists of photovoltaic cells and/or panels which are affixed to the exterior of a building (see definition of solar energy system, roof mounted).

Solar energy system, ground-mounted: Any solar energy system that is structurally mounted to the ground and is not attached to a building; may be of any size (small-, medium-, or large-scale).

Solar energy system, large-scale: A solar energy system which occupies more than 30,000 square feet of surface area.

Solar energy system, medium-scale: A solar energy system which occupies more than 2,000 square feet but less than 30,000 square feet of surface area.

Solar energy system, small-scale: A solar energy system which occupies no more than 2,000 square feet of surface area.

Solar energy system, surface area: The total square footage of the solar collector at maximum tilt to the vertical that occupies a given space or mounting surface, also referred to as the projected area of the array.

Solar energy system, photovoltaic (PV): A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when exposed to sunlight. A PV system may be roof-mounted, ground-mounted, or pole-mounted.

Solar energy system, roof mounted: Any solar energy system that is mounted on the roof of a building or structure.

Solar thermal system (solar hot water or solar heating systems): A solar energy system that directly heats water or other liquid, or air, using sunlight.

- (4) *Permitting.*

- a. Solar energy systems or devices shall be installed or operated in Old Orchard Beach in compliance with this ordinance and other applicable local, state and federal regulations and codes.
- b. Solar energy systems may be located within the town zoning districts in accordance with the following table:

Zoning District	Small-Scale	Medium-Scale	Large-Scale
R1	Building permit	Conditional use in CO only	Conditional use in CO only
R2	Building permit	Conditional use in CO only	Conditional use in CO only
R3	Building permit	Conditional use	Conditional use

R4	Building permit	Conditional use	Conditional use in CO only
R5	Building permit	Not permitted	Not permitted
RBD	Building permit	Conditional use	Not permitted
DD1, DD2	Building permit	Conditional use	Not permitted
GB1	Building permit	Conditional use	Conditional use
GB2	Building permit	Conditional use	Not permitted
ID, RD	Building permit	Conditional use	Conditional use
BRD	Building permit	Conditional use	Not permitted
PMUD	Building permit	Conditional use	Conditional use
NCD1, 2, 3	Building permit	Not permitted	Not permitted
NCD4	Building permit	Conditional use	Not permitted
AO	Building permit	Conditional use	Not permitted
HO	Building permit	Conditional use	Not permitted
CO	Building permit	Conditional use	Conditional use
RP	Conditional use	Not permitted	Not permitted
RA	Conditional use	Conditional use	Not permitted
LC	Building permit	Conditional use	Not permitted
GD	Building permit	Conditional use	Not permitted
SP	Conditional use	Not permitted	Not permitted
PB	Not permitted	Not permitted	Not permitted

- c. Solar energy systems requiring conditional use review shall obtain a building permit following planning board conditional use approval.
- d. All solar energy systems proposed in downtown districts 1 and 2 and historic overlay districts require a certificate of appropriateness from the design review committee before receiving a building permit from the code enforcement officer.

(5) *Dimensional requirements.*

a. *Height.*

1. Building-integrated photovoltaic systems and roof-mounted solar energy systems shall not exceed the maximum allowed building height or peak of the roof, whichever is greater, in the district they are proposed to be located. Regarding non-residential uses, roof-mounted solar energy systems shall be considered comparable to a building appurtenance and, for purposes of height measurement, shall be consistent with other building-mounted mechanical devices or similar building appurtenances as determined by the code enforcement officer or planning board.
2. Small-scale ground-mounted solar energy systems in all residential districts specified in section 78-456 of this chapter shall not exceed 12 feet in height when oriented at minimum tilt to the vertical.
3. Ground-mounted solar energy systems in all other zoning districts shall conform to the building/structure height requirements of the zoning district(s) in which they are allowed in.

b. *Setbacks.*

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1. All ground-mounted solar energy systems shall be regulated by the principal structures setback requirements of the zoning district(s) in which they are allowed in.
 2. Ground-mounted solar energy systems shall not be located in front yards in residential districts specified in section 78-456 of this chapter unless they are sited at least 50 feet from the front property line(s).
- c. *Lot coverage/calculating small, medium or large solar energy systems surface area.*
1. Lot coverage and surface area square footage (or solar collector coverage/horizontal projected area) shall be calculated by measuring the total surface area of the solar collector at maxim tilt to the vertical that occupies a given space or mounting surface.
 2. All ground-mounted solar energy systems lot coverage shall be regulated by the maximum building coverage percentage requirements of the zoning district(s) in which they are allowed in except for the following:
 - (i) *Industrial district*: 85 percent.
 - (ii) *Rural district*: 60 percent.
 - (iii) *Planned mixed use development*: 60 percent.
 - (iv) *Beachfront resort district*: 60 percent.
 - (v) *Residential beachfront district*: 60 percent.
 - (vi) *Stream protection*: 20 percent.
 - (vii) *Resource protection*: 20 percent.
- (6) *Additional standards for building integrated, building-mounted photovoltaic, roof-mounted and small-scale ground-mounted solar energy systems.*
- a. All wiring must comply with the National Electrical Code, most recent edition, as amended and adopted by the town of Old Orchard Beach.
 - b. Before operation, electrical connections must be inspected by the code enforcement officer or their designee.
 - c. Any connection to the public utility grid must be inspected by the appropriate public utility unless waived by the public utility.
 - d. Roof-mounted and building-mounted solar collectors shall meet all applicable fire safety and building code standards.
 - e. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the system and associated equipment within 90-days after the end of the 12 month period.
 - f. Each solar energy system and associated equipment shall be maintained as necessary to ensure that it is operating safely and as designed over its useful lifetime.
- (7) *Additional standards for medium- and large-scale ground-mounted solar energy systems.* In addition to the standards above, medium- and large-scale ground-mounted solar energy systems shall comply with the following:
- a. *Utility connections.* Reasonable efforts, as determined by the planning board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any utility requirements of the utility provider.

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- b. *Safety.* The solar energy system owner shall provide a copy of the conditional use application to the fire chief for their comment. All means of shutting down the solar energy system shall be clearly marked on the plan.
 - c. *Visual impact.* Reasonable efforts, as determined by the planning board, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, and protecting scenic resources. Support structures for ground-mounted solar facilities shall, to the extent reasonably feasible, use materials, colors and textures that complement the site context.
 - d. *Glare.* Solar panel placement shall be prioritized to negate any solar glare onto nearby properties, public gathering places or roadways without unduly impacting the functionality or efficiency of the solar energy system.
 - e. *Natural resources.* Reasonable efforts, as determined by the planning board, shall be made to protect wetlands, watersheds, working agriculture lands, surface waters, slopes greater than 20 percent, as well as undeveloped habitat blocks, high value plant and animal habitats and focus areas of ecological significance as mapped by the Maine Department of Inland Fisheries and Wildlife's Beginning with Habitat Program.
 - f. *Wildlife corridors.* To enhance and protect wildlife habitat connectivity, reasonable efforts, as determined by the planning board, shall be made to preserve and create wildlife corridors through and around solar energy system projects.
 - g. *Operations and maintenance plan.* The project applicant shall include an operation and maintenance plan, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation.
 - h. *Signage.* Signs identifying the owner or operator and a 24-hour emergency contact phone number shall be placed on the solar energy systems facility. All other signage shall comply with all applicable standards in this chapter.
 - i. *Emergency services.* The owner or operator of a solar energy system shall provide a copy of the as-built plan and electrical schematic to the fire chief. Upon request the owner or operator shall cooperate with the fire chief in developing an emergency response plan. All means of shutting down the system shall be marked on the plan. The owner or operator shall identify a person responsible for public inquiries throughout the life of the installation. Site access shall be maintained to a level acceptable to the fire chief.
 - j. *Installation conditions.* The owner or operator of the solar energy system shall maintain the facility in good condition. Maintenance shall include painting, structural repairs, access road repairs and maintenance, groundskeeping, and integrity of security measures.
 - k. *Removal.* Any solar energy system which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than one year after the date of discontinued operations. The owner or operator shall notify the code enforcement officer by mail of the proposed date of discontinued operations and plans for removal and decommissioning. Decommissioning shall consist of:
 - 1. Physical removal of all solar energy systems, structures, equipment, security barriers, and transmission lines from the site.
 - 2. Disposal of all solid and hazardous waste in accordance with local, state, and federal rules and regulations.
 - 3. Stabilization or re-vegetation of the site as necessary to minimize erosion.
 - l. *Abandonment.*

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1. Absent notice of proposed date of decommissioning or written notice of extenuating circumstances, a solar energy system shall be considered abandoned when it fails to generate electricity for more than one year without having first obtained the written consent of the code enforcement officer. Determination of abandonment shall be made by the code enforcement officer.
 2. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within one year of abandonment or the proposed date of decommissioning, the Town retains the right to use any and all legal or available means necessary to cause an abandoned, hazardous, or decommissioned solar energy system to be removed.
- m. *Performance guarantee.* At the time of approval, the applicant for a new medium or large-scale solar energy system shall submit to the town a performance guarantee in the amount of 150 percent of the estimated demolition and removal cost of the system. The owner may apply to the planning board for release of the guarantee at such time that it or its assigns remove the system and associated abandoned structures, and such completed removal is found to be satisfactory by the town. The performance guarantee shall automatically renew after the expiration date.

(Ord. of 9-15-2020)

Sec. 78-1279. Adult use marijuana business.¹

- (1) *Purpose.* The purpose of this section is to implement the Marijuana Legalization Act, 28-B M.R.S. § 101 et seq. and to protect the public health, safety, and welfare of the residents of and visitors to the Town of Old Orchard Beach by prescribing the manner in which marijuana business can be conducted in the town.

In addition, this section provides for the protection of public health and safety through reasonable controls on marijuana sales, cultivation, manufacturing, testing, and distribution operations as they relate to air quality, neighborhood and customer safety, security for these operations and their personnel, and other health and safety concerns.

- (2) *Applicability.* The regulations in this section shall apply to any persons or entities operating or interested in operating an adult use marijuana business in Old Orchard Beach.
- (3) *Definitions exclusive to adult use marijuana business.* As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in this chapter. Terms not listed below have the same meanings as in section 78-1 of this chapter.

Adult use marijuana: Marijuana cultivated, manufactured, distributed or sold by an adult use marijuana business.

Adult use marijuana business: Adult use marijuana cultivation facility, adult use marijuana products manufacturing facility, adult use marijuana testing facility, or adult use marijuana store regulated under this section.

Adult use marijuana cultivation facility: A facility licensed to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to adult use products manufacturing facilities, to adult use marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to adult use marijuana stores.

¹Cross reference(s)—Adult use marijuana business licensing, § 18-604 et seq.

Adult use marijuana nursery cultivation facility: A facility licensed to cultivate not more than 1,000 SF of plant canopy pursuant to 28-B M.R.S. § 501.

Adult use marijuana product: A marijuana product that is manufactured, distributed or sold by an adult use marijuana business.

Adult use marijuana store: A facility licensed to purchase adult use marijuana, immature marijuana plants and seedlings from an adult use cultivation facility, to purchase adult use marijuana and adult use marijuana products from an adult use products manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Adult use marijuana products manufacturing facility: A facility licensed to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

Applicant: A person or business entity that has submitted an application for conditional use approval for an adult use marijuana business pursuant to this article.

Business entity: A partnership, association, company, corporation, limited liability company or other entity incorporated or otherwise formed or organized by law. "Business entity" does not include a federal, state or municipal government organization.

Cultivation or cultivate: The planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale.

Edible marijuana product: A marijuana product intended to be consumed orally, including, but not limited to, any type of food, drink or pill containing marijuana or marijuana concentrate. "Edible Marijuana Product" does not include an edible product containing "hemp" as defined in Title 7 M.R.S.A, section 2231, subsection 1-A, paragraph D.

Harvested marijuana: The plant material harvested from a mature marijuana plant, except the stalks, leaves and roots of the plant that are not used for a qualifying patient's medical use. "Harvested marijuana" includes marijuana concentrate and marijuana products.

Immature marijuana plant: A marijuana plant that is not a mature marijuana plant or a seedling.

Licensed premises: The premises specified in an application for a state or local license that are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use marijuana or adult use marijuana products, in accordance with the requirements of state law and regulations and Old Orchard Beach Code of Ordinances.

Local license: Any license required by and issued under the provisions of Chapter 18 of the Old Orchard Beach Code of Ordinances.

Manufacture or manufacturing: The production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Marijuana" means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not.

Marijuana: The leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include hemp as defined in Title 7 M.R.S.A, section 2231, subsection 1-A, paragraph D or a marijuana product.

Marijuana product: A product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include

marijuana concentrate or a product containing hemp as defined in Title 7 M.R.S.A., section 2231, subsection 1-A, paragraph D.

Owner: A person whose beneficial interest in an adult use marijuana business is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of an adult use marijuana business and has a controlling interest in an adult use marijuana business.

Person: A natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

Plant canopy: The total surface area within the licensed premises of a cultivation facility that is authorized by the department for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants.

State license: Any license, registration or certification issued by the State of Maine.

Testing or test: The research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

(4) *Permitting and licensing.*

- (a) An adult use marijuana business shall be operated in Old Orchard Beach in compliance with this ordinance and other applicable local, state and federal laws, regulations and codes.
- (b) A person or business entity seeking to operate an adult use marijuana business shall not submit a conditional use application until their adult use marijuana business license is selected in accordance with Old Orchard Beach Code of Ordinances, Chapter 18, Section 18-610 (1).
- (c) Pursuant to 28-B M.R.S.A. § 402, a person or business entity seeking to operate an adult use marijuana business may not submit a conditional use application or business license application unless the person or business entity has been issued a conditional license by the State of Maine to operate the adult use marijuana business.

(5) *Performance standards for adult use marijuana business.* An adult use marijuana business requires approval from the planning board prior to the issuance of any business license, building permit or certificate of occupancy. The following performance standards are to be used by the planning board in reviewing conditional use applications and compliance with the same shall serve as requirements for approval of such conditional use applications.

- (a) Separation from sensitive uses.
 - 1. No adult use marijuana business shall be sited within 1,000 feet of the lot lines of a school, and
 - 2. No adult use marijuana business shall be sited within 1,000 feet of the lot lines of a child care facility, community center, higher educational facility, public outdoor recreational area, church, synagogue or other house of religious worship, public library, amusement parks, and drug and alcohol rehabilitation center.

The distance cited in this section shall be measured between the lot line of the proposed site for the adult use marijuana business and the lot line of the site of the use listed in (1) or (2) above at

their closest points. For purposes of this measurement, if an adult use marijuana business is to be located on a site that is leased from an unrelated third party, such business lot line shall be determined as follows:

- (i) If the business leases an entire parcel of land, the lot line of such business shall be the lot line of the parcel;
- (ii) If the business leases a free-standing building or buildings which is or are part of a larger parcel containing other free-standing buildings, the lot line of such business shall be the outer wall of the building(s) being leased by the business; and

For purposes of this section, the term "school" means a "public school" as that term is defined in 20-A M.R.S. § 1(24), as may be amended; a "private school" as that term is defined in 20-A M.R.S. § 1(22), as may be amended; and/or a "public preschool program" as that term is defined in 20-A M.R.S. § 1(23-A), as may be amended.

For purposes of this section, the term "child care facility" means a "child care facility" as that term is defined in 22 M.R.S. § 8301-A(1-A) (B), as may be amended, and/or a "family child care provider" as that term is defined in 22 M.R.S. § 8301-A(1-A) (C), as may be amended.

For purposes of this section, the term "community center" means a place where people from the community can meet for social, educational, and recreational purposes that is owned and operated by a municipality or a non-profit corporation.

For purposes of this section, the term "higher education facility" means a community college, college or university authorized by the State of Maine to award associate, baccalaureate or higher degrees.

For purposes of this section, the term "public outdoor recreational area" means a place used for public recreation, regardless of its size, owned by a governmental agency.

For purposes of this section, the term "amusement parks" means the property located within the amusement overlay district as shown on the Town of Old Orchard Beach General Zoning Map.

Once all required licenses, permits and approvals are issued, the town will not preclude a sensitive use listed in (1) or (2) above from opening at a location within the applicable buffer zones. An adult use marijuana business may continue to operate in its present location as a pre-existing use if a sensitive use as listed in (1) or (2) above later locates within the applicable buffer zone; however, the adult use marijuana business does so at its own risk, and town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a adult use marijuana business near a sensitive use listed in (1) or (2) above.

- (b) Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the adult use marijuana business pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.
- (c) Days and hours of operation. adult use marijuana businesses are limited to the following days of the week and hours of operation: Monday - Sunday, 9:00 a.m.—9:00 p.m.
- (d) Proximity limit. No adult use marijuana business shall be sited within 1,000 feet of another adult use marijuana business, medical marijuana registered dispensary or medical marijuana production facility as measured from the main entrance of one to the main entrance of the other by the ordinary course of travel.

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- (e) Multiple occupancy buildings. No adult use marijuana business may be located within or attached to a building that provides space for any other residential or nonresidential occupancies.
 - (f) Area of activities.
 - 1. All activities of an adult use marijuana business, including, but not limited to cultivating, growing, manufacturing, processing, displaying, selling, and storage, shall be conducted indoors. An adult use marijuana business is not permitted to conduct outdoor sales or services of any kind.
 - 2. An adult use marijuana business must be operated from permanent locations, which may utilize telephone and internet orders as long as the buyer pays for and picks up such orders in the store on the day the order is made.
 - (g) An adult use marijuana business shall have a minimum of one off-street parking space per 250 square feet of floor area and one off-street parking space for each on-shift employee. Applicant shall provide documentation representing the legal right to use each parking space throughout the life of the adult use marijuana business.
 - (h) The proposed adult use marijuana business will not cause or negatively contribute to existing highway or public road congestion or unsafe conditions with respect to use of highways or public roads existing or proposed. Applicant shall submit a traffic impact analysis and assessment prepared by a Maine Licensed Traffic Engineer.
 - (i) Submission of a waste management plan which shall include, but is not limited to compliance with Old Orchard Beach Code of Ordinances Chapter 46 (solid waste).
 - (j) Drive-through and home delivery prohibited. Adult use marijuana stores are prohibited from having drive-through pick-up facilities and home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within an adult use marijuana store.
 - (k) Signs. Notwithstanding the sign requirements of the zoning district where the adult use marijuana business is located and Chapter 78, Article VIII, Division 5 of Old Orchard Beach Code of Ordinances, and 28-B M.R.S. § 702, all signs used by and all marketing and advertising conducted by or on behalf of an adult use marijuana business may not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal to persons under 21 years of age. The signs, marketing, or advertising are prohibited from making any health or physical benefit claims.
 - (l) Sale of edible products. No food products shall be sold, prepared, produced or assembled by an adult use marijuana business except in compliance with all operating and other requirements of the state and Old Orchard Beach laws and regulations. Any goods containing marijuana for human consumption shall be stored in a secure area.
 - (m) Odor management. For all adult use marijuana businesses, the odor of marijuana must not be detected offsite, i.e., must not be detected at premises that are not under the custody or control of the business. To prevent and control marijuana odors, an odor control plan shall be submitted as part of the conditional use application describing the odor(s) originating or anticipated to originate at the premises and the control technologies to be used to prevent such odor(s) from leaving the premises. The odor control plan shall, at a minimum, include the following:
 - 1. A facility floor plan that identifies the locations of all odor-emitting activities and sources. The plan shall also identify the location of doors, windows, vents, HVAC systems, odor control systems and other relevant information.
 - 2. A list of specific odor-emitting activities and sources, and a description of the processes that will take place at the facility, including, but not limited to, vegetative flowering, processing and storage.

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3. For each odor-emitting activity or source, a description of the administrative procedures as well as the engineering processes, technologies, and equipment the facility will use.
- (i) Administrative controls shall include, at a minimum: management practices to isolate odor activities and sources, use of standard operating procedures, employee training, regular equipment inspections and maintenance of inspection logs.
 - (ii) Engineering controls shall include, at a minimum, building design features; use of equipment and technology to address each specific odor-emitting activity or source; a systems and equipment maintenance and replacement schedule; and evidence that proposed equipment and technology are sufficiently capable and appropriately sized consistent with marijuana industry best practices for control technologies designed to effectively mitigate odors.

An adult use marijuana business must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein and to mitigate noxious gases or other fumes used or created as part of the production. While the town does not mandate any particular equipment specifications with regard to filtration, an adult use marijuana business is strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

- (n) Sufficient means of preventing smoke, debris, dust, fluids and other substances from exiting an adult use marijuana business must be provided at all times.
- (o) An adult use marijuana business shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and town laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard adult use marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended and security cameras must be installed to record activities in the area of such trash receptacles.
- (p) Security. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:
 - 1. Security surveillance cameras installed and operating 24 hours a day, seven days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
 - 2. Door and window intrusion robbery and burglary alarm systems with audible and police department notification components that are professionally monitored and maintained in good working order;
 - 3. A locking safe or its functional equivalent permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;
 - 4. Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of the Old Orchard Beach Code of Ordinances;
 - 5. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks; and
 - 6. Methods to ensure that no person under the age of 21 shall enter an adult use marijuana business and have access to marijuana and marijuana products.

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7. Methods to control loitering, which includes obstruction of free passage of pedestrians and vehicular traffic.

All security recordings shall be preserved for at least 72 hours. An adult use marijuana business shall provide the police chief or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the town may provide notice of any operating problems associated with the business.

- (q) Change of use/addition of use/expansion of use. If any type of adult use marijuana business wants to change to another type of establishment, add another type of adult use marijuana business to its existing operations, or to expand the existing use (including additional square footage), such change of use, additional use or expansion of use must be reviewed and approved by the planning board for compliance with this section.
- (r) Other laws remain applicable. An adult use marijuana business shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing adult use marijuana and/or adult use marijuana businesses, the stricter law or regulation shall control.
- (s) Conditional approval. All adult use marijuana business approvals shall include a condition that requires the person or business entity to secure applicable state and town licensing approvals before any on-site operations begin.
- (t) Lot size. The proposed adult use marijuana store total land units, as listed on the parcel's vision property card under land line valuation and maintained by the town, is equal to or less than 21,780 sq. ft.
- (u) Building size. The proposed adult use marijuana store total eff. area, as listed on the parcel's vision property card under building sub-area summary section and maintained by the town, is equal to or less than 1,000 sq. ft.

(Ord. of 11-16-2021(3); Ord. of 1-17-2023; Ref. of 6-13-2023)

Sec. 78-1280. Tattoo art studio and boutique.

- (a) *Purpose.* The purpose of the tattoo art studio and boutique provision is to conditionally permit the establishment of a tattoo art studio and boutique business providing tattooing services and retail sales components, while protecting the residential neighborhood character.
- (b) *Applicability.* The regulations in this section shall apply to tattoo art studio and boutique establishments in the NC-3 district. There shall be no more than one tattoo art studio and boutique establishment in the district.
- (c) *Tattoo art studio and boutique* establishments shall operate in conformance with the following standards:
 - (1) Shall not be located within 50 feet of a parcel with an establishment serving alcohol for on the premise consumption or an adult use marijuana business, as measured from the lot line of the proposed tattoo art studio and boutique to the lot line of the other parcel, as measured from their closest points.
 - (2) Hours of operation shall be limited to: Monday through Sunday from 9:00 a.m. to 9:00 p.m.
 - (3) There shall be no on-site sales and/or consumption of alcoholic beverages, tobacco products, or adult use marijuana.
 - (4) There shall be no loitering at or near the facility during or after the hours of operation.
 - (5) Shall provide a plan for how the business will support and complement the character of surrounding residential neighborhoods.

Sec. 78-1281. Lodging condominiums.

- (1) *Purpose.* The purpose of these regulations is to assure that lodging condominium projects are conditioned upon development approval in such a way as to ensure continued operation as a lodging condominium; to ensure appropriate public health, safety, welfare; to mitigate potential impacts of lodging condominiums on abutting property, off-site vehicular traffic, public utilities, building design and safety, police, fire and emergency services; to require rental licensing of all units; and to provide the town of Old Orchard Beach with appropriate licensing, code compliance, and operational controls.
- (2) *Applicability.* The regulations in this section shall apply to any persons or entities operating or proposing to convert a lodging use into a lodging condominium in Old Orchard Beach and any persons or entities operating or proposing to operate one or more lodging condominium units.

Lodging condominium projects approved by the town of Old Orchard Beach and operating before the date of the adoption of this ordinance. If a lodging condominium proposes a change to another use, add another use to its existing operations, expand the existing use (including additional square footage), or change unit size or location, such change of use, additional use, expansion of use, or unit change must be reviewed and approved by the planning board for compliance with this section.

- (3) *Definitions exclusive to lodging condominium.* As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in the town of Old Orchard Beach Code of Ordinances. Terms not listed below have the same meanings as in applicable Old Orchard Beach Code of Ordinances chapter including chapter 78, section 78-1 and chapter 34, section 34-26. If terms conflict, the terms in this section prevail.

Habitable space: Space occupied by one or more persons for living, sleeping, eating or cooking, excluding kitchenettes, bathrooms, toilet rooms, laundries, foyers, pantries, corridors, stairways, closets, cellars, and storage spaces.

Lodging condominium: A commercial condominium project with lodging condominium units within a lodging establishment, which units are individually owned, and, except as permitted in section 78-1281(10), 100 percent of which are made available for transient use as short-term rentals when not being used by the unit owner.

Lodging condominium unit (unit): Any room or groups of rooms located within a lodging condominium and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Lodging establishment: A hotel, motel, bed and breakfast establishment or inn.

Personal use: The use or occupancy of a unit by a unit owner, by a non-rental paying guest of an owner, or by a member of the owner's family.

Seasonal: Any lodging condominium building or any lodging condominium unit used or occupied by unit owners, unit guests, transients, on-site manager, or any employee only during the period March 1 to December 1 of every calendar year.

Short-term rental: Any building or structure, or portion thereof, that is offered or provided to a guest or guests to be used for living or sleeping for a fee for less than 30 consecutive calendar days, Short-term rental units may be whole house, duplexes, multifamily, apartments, condominiums, lodging condominium, and individual rooms or individual units in homes, duplexes, multifamily, apartments, condominiums, and lodging condominium.

Transient: means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement of whatsoever kind and nature for a period of less than 30

consecutive calendar days, counting portions of calendar days as full days. Any person occupying space in a lodging condominium shall be deemed to be a transient until the period of 30 days has expired.

Unit owner or owner: An individual or entity that acquires any ownership interest in, and holds title to, one or more lodging condominium units.

- (4) *Permitting and licensing.* No person or entity shall construct, occupy or operate a lodging condominium within the Town without first obtaining all necessary permitting and licensing approvals pursuant to chapter 78, article VII (conditional uses) and this section. Except as specifically provided for in this section, all other applicable provisions of the Old Orchard Beach Code of Ordinances, including, but not limited to chapter 18 (businesses), chapter 30 (fire prevention and protection), chapter 34 (housing), and chapter 78 (zoning) as well as any state and federal codes and laws shall be applicable to the construction, occupancy and operations of lodging condominiums; provided however, that the more specific standards contained in this section shall prevail over any general standards set forth in the town of Old Orchard Beach Code of Ordinances. A lodging condominium shall be allowed as a conditional use, subject to the terms of this chapter, 78, article VII and this section, and only within those zoning districts in which lodging condominiums are expressly allowed as a permitted or conditional use. Each application for a lodging condominium will be reviewed by the planning board. Approval shall be subject to required conditions necessary to carry out the standards of this section.

Each lodging condominium unit requires a business license which will be reviewed by the council. As part of business license renewal, each unit owner must provide the town with copies of all rental records, tax receipts or any other documents necessary to verify conformance with the standards, conditions and requirements set forth in this section and any planning board approval.

- (5) *Lodging condominium application.* An application for a lodging condominium shall include the following as well any other information that the town may determine is necessary to review the application.
- (a) Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information:
1. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.
 2. Information block containing location, address, map-block-lot number of the subject.
 3. Property as recorded in the town assessor's office, name and address of the applicant and owner if different.
 4. Approval block providing space for the signatures of planning board members.
 5. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan.
 6. Identification and location of all abutters and land use within 200 feet of property proposed to be converted.
 7. The dimensions and layout of all building and structures.
 8. Delineation of all existing and proposed public and private easements on or directly adjacent to the property.
 9. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage.

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10. Location of existing site features located on the property, including but not limited to existing streams, wetlands, drainage swales, tree lines, identification and location of specimen trees greater than eight inches caliper, location of existing rock outcrops, and boundary of 100-year flood zone as defined by the Federal Emergency Management Agency flood insurance rate map for the town.
 11. Location of existing and proposed utilities including overhead telephone poles and/or underground cables, public sewer and water lines, gate valves, fire hydrants, dumpsters or waste receptacles, private septic systems and water supply wells.
 12. Specification, layout, and quantity of proposed and existing landscaping.
 13. Location, layout, and dimensions of all existing and proposed drainage facilities, accompanied by detailed drainage calculations signed and sealed by a professional engineer licensed in the state.
 14. Location, specification, height and photometric data of existing and proposed exterior lighting.
- (b) Submission of the condominium plat prepared in accordance with Maine Revised Statutes Title 33 § 1602-109.
 - (c) Submission of the condominium declaration.
 - (d) Detailed description of all uses and operations.
 - (e) Submission of municipal service and infrastructure analysis. The planning board must find the lodging condominium will not have a negative fiscal or services impact on the town.
 - (f) Responses to each of the 12 criteria in section 78-1240 of this article.
 - (g) Demonstrate conformance with the sound standards in chapter 26, environment, including section 26-63, noise level standards, and section 26-66, measurement procedures.
 - (h) Floor plan of converted building(s). Plans shall show interior use of space and dimensions.
 - (i) Demonstrate conformance with applicable building and life safety code requirements.
 - (j) Off-street parking plan. Lodging condominiums shall assign two off-street parking spaces for each lodging condominium unit and one off-street parking space for each on-shift employee.
 - (k) Traffic impact analysis and assessment prepared by a Maine Licensed Traffic Engineer.
 - (l) Submission of a waste disposal operation plan which shall be in compliance with chapter 46, solid waste.
 - (m) Detailed description stating how the lodging condominium will comply with the short-term occupancy requirements in this section.
 - (n) Statement describing how the lodging condominium association will ensure the lodging condominium and all unit owners will comply with this section, including, but not limited to short-term rental and licensing requirements.
 - (o) Documentation demonstrating how the lodging condominium complies with the zoning district(s) and applicable standards in chapter 78, zoning, including but not limited to article VIII, performance standards.
 - (p) Lodging condominium maintenance agreement.
 - (q) Identify the maximum occupancy number for each lodging condominium unit.

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- (6) *Condominium declaration.* Each lodging condominium is required to submit a copy of the condominium declaration. In addition to conforming with the condominium requirements identified in the Maine Condominium Act, all condominium declarations shall, at a minimum, include the following:
- (a) Requirement that each unit owner shall secure town business license approval within 60 days of unit closing and renewal business licenses in accordance with this section and chapter 18, businesses, ordinance.
 - (b) Requirement that each unit owner shall include documentation demonstrating compliance with the short-term occupancy standard in this section.
 - (c) Requirement that each lodging condominium building and each lodging condominium unit use and occupancy shall be seasonal.
 - (d) Excepting a single unit used for the on-site manager, include language that states 100 percent of the units in the lodging condominium must be made available as short-term rental units for guests for a minimum of 60 days or portions thereof during the period March 1 to December 1 of every calendar year.
 - (e) Requirement that unit guests are prohibited from remaining in any unit for 30 or more consecutive days or portions thereof out of every calendar year. This prohibition includes consecutive or renewed short-term rentals to the same unit guest or relations of the same unit guest during the same calendar year.
 - (f) Record keeping requirements identifying the way unit owners shall document short term and personal use occupancy. At a minimum, the manner shall include a recording of the days and payments for guest use and days used for personal use during each calendar year.
 - (g) Requirement that the lodging condominium association will provide the town with contact information (name, phone, email) of lodging condominium association membership and the lodging condominium management entity or company. Information shall include at least one contact who is available seven days a week, 24 hours a day. This information shall be provided to the Town Code enforcement officer each year, no later than 15 January or anytime there is a change.
 - (h) Lodging condominium association bylaws.
 - (i) Requirement that the lodging condominium association secure the services of a lodging condominium management entity or company. The lodging condominium association shall give the lodging condominium management entity or company the right to provide to the lodging condominium, the property, and to unit owners, lessees and other occupants, any or all on property services commonly provided at lodging establishments and condominium developments.
 - (j) Requirement that unit owners shall be required to enter into a unit maintenance agreement with the lodging condominium association and/or the lodging condominium management.
 - (k) Require operation on a seasonal, seven day a week, minimum 12 hours a day basis the following services, at a minimum: front desk and lobby operations, housekeeping, and short-term rental reservation services.
 - (l) Acknowledgement that lodging condominium association, lodging condominium management, and each unit owner shall allow town inspection and violation investigation.
 - (m) Contracted private waste hauling.
 - (n) Assigned parking spaces including two on-site spaces for each unit.
 - (o) Identify the maximum occupancy number for each lodging condominium unit.

(p) Requirement that states the lodging condominium declaration shall not be amended without the prior approval of the town.

- (7) *Lodging condominium association.* A lodging condominium association shall be established to govern, maintain, and operate the lodging condominium and its services. The lodging condominium application and condominium declaration shall require the lodging condominium hotel association to hire a qualified professional management entity or company as management in order to maintain and operate all portions of the lodging condominium. The association and management entity or company shall file contact information with the town. Any changes to association membership shall be reported to the town.

Unit owners shall be required to enter into a unit maintenance agreement with the lodging condominium association or the lodging condominium management.

- (8) *Lodging condominium management.* The lodging condominium association shall enter a contract with a professional management entity or company to manage operations. The management entity or company shall have experience in the hotel/motel management business and condominium developments. Lodging condominium management responsibilities shall include, at a minimum: front desk and lobby operations, housekeeping, short-term rental reservation services, and monitor and document the use of each lodging condominium unit; and may include care of landscape areas, building maintenance, maintenance of common areas, and other amenities and improvements. Any changes to the lodging condominium management company shall be reported to the town.

Unit owners shall be required to enter into a unit maintenance agreement with the lodging condominium association or the lodging condominium management.

- (9) *Seasonal use/occupancy.* Use of the lodging condominium building(s) and occupancy of any lodging condominium unit shall only be allowed during the period March 1 to December 1 of every calendar year. Lodging condominium building(s) and lodging condominium units shall not be used or occupied in any manner during the period December 2 to February 28 of every calendar year. Use and occupancy includes unit owners, unit guests, transients, on-site manager, and any employee.
- (10) *Short term occupancy.* Every lodging condominium unit must be made available as a rental unit for guests for a fee (i.e., guests who rent and pay for the owner's unit through the condominium hotel management or entity, or through the unit owner directly) a minimum of 60 days or portions thereof during the period March 1 to December 1 of every calendar year. Unit guests are prohibited from remaining in any unit for 30 or more consecutive days or portions thereof out of every calendar year. No unit shall be used as a timeshare, fractional or other vacation ownership unit.

Consecutive or renewal of short-term rental to the same unit guest or a relation of the unit guest during the same calendar year is prohibited.

No more than one unit in a lodging condominium may be used for the occupancy by a person or family serving as the on-site manager of the lodging condominium. This unit shall be exempt from the less than 30 day rental requirement.

- (11) *Performance standards for lodging condominiums.* A lodging condominium requires approval from the planning board prior to the issuance of any business license, building permit or certificate of occupancy. In addition to the standards referenced in this section, each lodging condominium is required to meet the following standards, conditions, and requirements.
- (a) No unit may be converted into or used as any form of permanent residence.
 - (b) All units shall be completely furnished with furniture and appliances.
 - (c) A front desk and lobby area accessible to members of the public.

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- (d) The lodging condominium shall have in place waste disposal operational plan in conformance with chapter 46, solid waste. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All lodging condominiums shall have contracted private waste hauler.
 - (e) The lodging condominium will not cause or negatively contribute to existing highway or public road congestion or unsafe conditions with respect to use of highways or public roads existing or proposed. Applicant shall submit a traffic impact analysis and assessment prepared by a Maine Licensed Traffic Engineer.
 - (f) Municipal service and infrastructure analysis. All proposed lodging condominium conversions will be reviewed by the planning board with respect to its effect upon existing services and facilities. The planning board must find the lodging condominium will not have a negative fiscal or services impact on the town. The applicant for a conversion shall provide analysis addressing how the conversion will affect each of the following:
 - 1. Schools, including enrollment and busing.
 - 2. Road maintenance and snow removal.
 - 3. Police.
 - 4. Fire and ambulance protection.
 - 5. Solid waste disposal.
 - 6. Recreation facilities.
 - 7. Sewer facilities.
 - 8. Runoff water disposal drainageways and/or stormwater infrastructure.
 - (g) Each unit must be made available to guests for short-term rental transient use, except as may specifically provided otherwise in this section.
 - (h) Each unit owner shall secure business license approval for each short-term rental and up-to-date business license renewal for each short-term rental.
 - (i) No unit shall be used as a timeshare, fractional or other vacation ownership unit.
 - (j) Each unit owner shall become a member of a condominium hotel association.
 - (k) The condominium declaration submitted shall require operation on a seasonal, seven day a week, minimum 12 hours a day basis the following services at a minimum: front desk and lobby operations, housekeeping, and short-term rental reservation services.
 - (l) Condominium declaration that complies with section 78-1281(6) of this article.
 - (m) Except as specifically provided for in this section, all other applicable provisions of the Old Orchard Beach Code of Ordinances Chapter 78, Zoning, shall apply to the lodging condominium project, including, but not limited to applicable standards of the zone in which the project is located.
 - (n) Conformance with each of the 12 criteria in section 78-1240 of this article.
 - (o) All ancillary or accessory uses to the lodging condominium, such as restaurants, cafes, and retail sales, shall be operated on the same property as the lodging condominium building or buildings.
 - (p) Every lodging condominium unit shall contain a minimum of 400 square feet of floor area of habitable space.

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- (12) *Licensing.* Each unit owner shall secure business license approval for each lodging condominium unit and up-to-date business license renewal for each unit. Each unit owner shall secure business license approval for each lodging condominium unit within 60 days of unit closing. Each unit must be made available to guests for short-term rental transient use only, except as may specifically provided otherwise in this Section.

At the time of business license renewal, each unit owner shall provide the town with copies of all rental records, tax receipts or any other documents necessary to verify conformance with the standards, conditions and requirements set forth in this section.

- (13) *Reporting.* Each unit owner and the lodging condominium association shall maintain and regularly make available to the Town information, records, and documentation, and also shall allow reasonable access to individual units, as the code enforcement officer or designee finds necessary to inspect, have or review in order to ensure the unit owner's and lodging condominium association's compliance with this section and other applicable town laws, regulations, the lodging condominium conditions, the condominium plat and plans, and condominium declaration.
- (14) *Amendments and changes.* If a lodging condominium proposes a change to another use, add another use to its existing operations, expand the existing use (including additional square footage), or change unit size or location, such change of use, additional use, expansion of use, or unit change must be reviewed and approved by the planning board for compliance with this section. Any plan or plat amendments must be reviewed and approved by the planning board for compliance with this section. Any condominium declaration change shall be in compliance with this section. Any changes to association membership or the lodging condominium management company shall be reported to the town.
- (15) *Inspections.*
- (a) *Conduct of inspections.* The code enforcement officer is authorized to conduct inspections of all premises within the scope of this section.
 - (b) *Investigation of complaints.* The code enforcement officer shall investigate all complaints of alleged violations of this section.
 - (c) *Right of entry.* The code enforcement officer in the performance of his duties shall have the right of access to any premises at reasonable hours, upon giving proper identification, for the purpose of inspecting the premises in order to determine compliance with this section and for the purpose of examining and inspecting any work performed under this section.
 - (d) *Access.* Owners, agents, operators, and occupants shall provide access to all parts of the premises within their control to the code enforcement. Refusal to provide such access shall be a violation of this section.
- (16) *Violations and enforcement.*
- (a) When any violation of this section is found to exist, the code enforcement officer or their designee is hereby authorized and directed to institute any and all actions either legal or equitable that may be appropriate or necessary for the enforcement of this section, the action to be brought in the name of the town.
 - (b) *Enforcement.* The code enforcement officer or their designee is granted authority to enforce this Section in accordance with town of Old Orchard Beach Code of Ordinances, Chapter 78, Article II.
- (17) *Conflicting language.*
- (a) *Conflict between chapters, articles, divisions or sections.* If the provisions of different chapters, articles, divisions or sections of the town of Old Orchard Beach Code of Ordinances conflict with this Section, the provisions of this section shall prevail.

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- (b) Conflict with statutes. Where any conflict exists between a provision of this section and any provision of the Maine Revised Statutes, the Statutes shall prevail.

(Ord. of 7-25-2023(2))

Secs. 78-1282—78-1305. Reserved.

DIVISION 3. WIRELESS TELECOMMUNICATIONS FACILITIES²

Sec. 78-1306. Purpose.

The purpose of this division is to establish performance standards for the construction of wireless telecommunications facilities (WTF) in the town that:

- (1) Encourages public access to telecommunications service;
- (2) Facilitates fair and equal competition among wireless telecommunications service providers; and
- (3) Requires the construction of telecommunications facilities in a manner that protects the public health, safety, welfare, and preserves the visual cultural character of the town and its neighborhoods.

(Ord. of 9-18-2001, § 11.6)

Sec. 78-1307. Location and use requirements.

- (a) *Location of private facilities.* Wireless telecommunications facilities and wireless telecommunications towers may be located within the town zoning districts in accordance with the following table:

Zoning District	New Tower Construction	Collocation on an Existing Tower	Architectural Siting
R-1, R-2, R-3, R-4, R-5	Not permitted	Not permitted	Conditional use
Rural district	Not permitted	Not permitted	Conditional use
Downtown districts 1 and 2	Not permitted	Not permitted	Conditional use
Beachfront resort district	Not permitted	Not permitted	Conditional use
Neighborhood commercial	Not permitted	Not permitted	Conditional use
General business 1 and 2	Not permitted	Not permitted	Conditional use
Industrial	Conditional use	Conditional use	Conditional use
PMUD	Conditional use	Conditional use	Conditional use
SRP, SP	Not permitted	Not permitted	Not permitted
Shoreland activity (SA)	Not permitted	Not permitted	Conditional use

²Cross reference(s)—Businesses, ch. 18; utilities, ch. 58.

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- (b) *Priority of locations.* New wireless telecommunications facilities must be located according to the priorities listed in this subsection. The applicant shall demonstrate to the planning board that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility. The priorities, from highest to lowest, are as follows:
- (1) First priority: architectural siting on an existing structure in the Industrial district.
 - (2) Second priority: architectural siting on an existing public or private structure in the PMUD district.
 - (3) Third priority: architectural siting on an existing public or private structure in the GB-1, GB-2, DD-1, DD-2, or BRD district.
 - (4) Fourth priority: a new tower or facility in an industrial district.
 - (5) Fifth priority: a new tower or facility in the PMUD district.
 - (6) Sixth priority: any other location allowed by subsection (a) of this section.
- (c) *Location of public wireless telecommunication facilities.* Wireless telecommunication facilities may be constructed on land or facilities owned, leased, or operated by the town in any zoning district, provided that the facility meets all performance standards for wireless communication facilities contained in this division.
- (d) *Exemptions.* The following uses are exempt from this division:
- (1) An emergency wireless telecommunication facility established temporarily for emergency use by public officials.
 - (2) Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
 - (3) Parabolic antennas of less than 12 feet in diameter that serve as accessory uses to a property other than a wireless telecommunications facility.
 - (4) Maintenance or repair of an existing wireless telecommunications facility, provided that the use is not expanded and the height of towers or structures is not increased.
 - (5) Temporary wireless telecommunications facilities constructed and or used for a single period of less than 100 days.
 - (6) Antennas as accessory uses: any antenna serving as an accessory use affixed to a residential structure and functioning in conformance with all other pertinent sections of this chapter.
- (e) *Prohibited uses.* Construction and/or architectural siting of wireless telecommunications facilities are prohibited on or attached to the following:
- (1) Any building or structure determined by the code enforcement officer to be physically incapable of supporting the proposed wireless telecommunications facility.
 - (2) Any building or structure determined by the code enforcement officer to be in violation of the town blighted buildings ordinance.
 - (3) Trees, shrubs, or any form of vegetation.
 - (4) Any use that increases or expands the nonconformity of an existing structure, building, or use in any zoning district.

(Ord. of 9-18-2001, § 11.6.1)

Sec. 78-1308. Site plan/conditional use review required.

All expansions of existing wireless telecommunications facilities and construction of new wireless telecommunications facilities shall be reviewed under this article pertaining to conditional uses and article IV of this chapter pertaining to site plan review. Site plan review shall be either administrative or plenary, as follows:

- (1) *Administrative site plan approval.* Procedures for administrative site plan approval are as follows:
 - a. *Expansion of existing facility.* Administrative site plan approval is required for any expansion of an existing wireless telecommunications facility which:
 1. Increases the height of an existing antenna on a transmission tower by no more than ten feet;
 2. Increases the size of an accessory structure to the wireless telecommunications facility by no more than 500 square feet in area and no more than 15 feet in height; or
 3. Involves collocation of wireless telecommunications facilities on an existing wireless telecommunications tower which is not increased in height.
 - b. *Review by town planner and code enforcement officer.* Where an expansion of an existing wireless telecommunications facility qualifies for administrative site plan approval under subsection (1)a of this section, the town planner and code enforcement officer shall be substituted for the planning board as the reviewing authority for the conditional use under this article.
- (2) *Plenary site plan approval.* All other expansions and all new construction shall require plenary site plan review and conditional use review by the planning board.

(Ord. of 9-18-2001, § 11.6.2)

Sec. 78-1309. Submission requirements.

The applicant for a wireless telecommunications facility shall submit the following materials and information in addition to submission requirements specified in article IV of this chapter and this article:

- (1) *Copy of Federal Communications Commission license.* A copy of the Federal Communications Commission license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current Federal Communications Commission regulations.
- (2) *Certification.* Certification by the applicant that the proposed facility complies with all Federal Communications Commission standards for radio emissions.
- (3) *Topographic map.* A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on rooftops, within a five-mile radius of the proposed facility, unless this information has been previously made available to the town. This requirement may be met by submitting current information, within 30 days of the date the application is filed, from the Federal Communications Commission tower registration database.
- (4) *Site plan.* In addition to plenary site plan requirements in article IV of this chapter, a site plan for a wireless telecommunications facility shall:
 - a. Be prepared and certified by a professional engineer registered in the state.
 - b. Show location, type, and height of the proposed facility, and its antenna capacity.

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- c. Show on-site and abutting land uses.
 - d. Show means of access.
 - e. Demonstrate compliance with all applicable American National Standards Institute (ANSI) technical and structural codes.
- (5) *Visual impact assessment.* In order to determine whether the proposed wireless telecommunications facility will adversely impact the visual quality of the surrounding environs, a visual impact assessment of the facility shall be submitted including the following elements:
- a. *Elevation drawings.* Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level.
 - b. *Viewshed analysis.* Viewshed analysis as follows:
 - 1. A viewshed map of the proposed facility showing all locations from which the proposed wireless telecommunications facility would be visible during the summer and winter. The map shall specifically identify visibility from residential neighborhoods, tourist accommodations, recreational areas including the beach, roads and highways, historic and cultural facilities, commercial areas, and future development areas for both day and night conditions.
 - 2. The foreground, midground, and background distance zones from the proposed wireless telecommunications facility shall be designated on the viewshed map. Standard viewer height shall be five feet and standard motorist height shall be 3.5 feet.
 - c. *Photo simulations.* Photo simulations of the proposed facility taken from perspectives determined by the planning board during the preapplication conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and proposed method of screening.
 - d. *Visual quality assessment.* An evaluation of the impact of the proposed wireless telecommunications facility on existing visual quality, utilizing replicable and statistically reliable qualitative methods. With prior planning board approval, visual impact assessment models, such as the Bureau of Land Management's visual resource management system, are acceptable tools in generating the qualitative analysis.
 - e. *Mitigation plan.* An outline of the applicant's strategy for mitigating the adverse visual impacts identified in the visual impact assessment. This includes the use of landscaping, fencing, color modification, and re-siting of the facility. Mitigation plans shall be tested for effectiveness utilizing the same visual impact assessment model employed in the submission requirement in subsection (5)d of this section.
- (6) *Service strategy.* A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
- (7) *Historic resources.* Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed or eligible for listing in the National Register of Historic Places (see 16 USC 470w(5); 36 CFR 60 and 800) located within the viewshed of the proposed wireless telecommunications facility.
- (8) *Agreement of collocation cooperation.* A signed statement stating that the owner of the wireless telecommunications facility and his successors and assigns agree to:

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- a. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
 - b. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties.
 - c. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation.
 - d. Require no more than a reasonable charge for shared use, based on market rates in the community and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of such costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
- (9) *Performance surety.* A surety bond approved by the planning board, paid and maintained by the applicant for the entire life of the facility to pay for the costs of removing the facility if it is abandoned.
 - (10) *Agreement to emission compliance reports.* A binding agreement that the applicant will submit annual emission reports to the town demonstrating compliance with Federal Communications Commission electromagnetic emission standards for the facility.
 - (11) *Certification of electromagnetic noninterference.* Data conclusively demonstrating that the proposed wireless telecommunications facility will not adversely impact the effective operation of other existing electromagnetic and radio devices within the immediate site of the proposed facility.
 - (12) *Public notification.* Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.
 - (13) *Waiver of submission requirements.* The planning board may waive any of the submission requirements in this section if it finds that such submissions would not provide relevant information necessary for the board to render a reasonable decision.

(Ord. of 9-18-2001, § 11.6.3)

Sec. 78-1310. Approval standards for towers.

An application for approval of a wireless telecommunications facility tower under section 78-1308(2) must meet the following standards:

- (1) *Design for future collocation.* A new wireless telecommunications facility must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers, unless the planning board determines that the particular circumstances of the new wireless telecommunications facility or of the property upon which it is located make future collocation infeasible or unlikely.
- (2) *Height.* A new wireless telecommunications tower must be no more than 150 feet in height.
- (3) *Setbacks.* A new or expanded wireless telecommunications facility must comply with the setback requirements for the zoning district in which it is located or be set back 105 percent of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

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- a. In the industrial district, the setback may be reduced to no less than the setback requirement for the zoning district by the planning board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
 - b. The planning board may reduce the property line setback for towers supporting communications equipment used by the town emergency services to no less than the setback requirement for the zoning district, provided that the facility is designed to collapse in a manner that will not harm other property.
- (4) *Landscaping.* A new wireless telecommunications facility and related equipment must be screened from view from abutting properties, to the maximum extent practicable with vegetation. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.
 - (5) *Fencing.* A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
 - (6) *Lighting.* A new wireless telecommunications facility must be illuminated only as necessary to comply with Federal Aviation Administration or other applicable state and federal requirements. Site security lighting for ground support facilities shall be restricted to shielded downlights that produce no more than 0.5 footcandle at the site property line as approved by the planning board.
 - (7) *Color and materials.* Except as otherwise required by state or federal law, a new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Muted colors, earth tones, and subdued hues shall be used.
 - (8) *Structural standards.* A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
 - (9) *Visual impact.* A new or expanded wireless telecommunications facility must have no unreasonable adverse impact to existing visual quality within the viewshed of the proposed wireless telecommunications facility. Adverse visual impact shall be defined as any one or combination of the following effects:
 - a. The scale, size, coloration or lighting of the wireless telecommunications facility dominates the observer group's midground or foreground field of view or is positioned within the landscape to serve as a focal point in the background and adversely impacts existing visual quality.
 - b. The proposed wireless telecommunications facility is visually dominant or visually incompatible with the existing visual quality of major tourist gateways into the town including the following:
 - 1. Saco Avenue corridor.
 - 2. Cascade Road corridor extending to Old Orchard Street.
 - 3. East Grand Avenue corridor extending from Scarborough to Old Orchard Street.
 - 4. West Grand Avenue corridor extending from Saco to Old Orchard Street.
 - c. The scale, orientation, position, and design of the proposed wireless telecommunications facility visually conflicts with the pattern, texture, and scale of the surrounding built environment.
 - d. The proposed wireless telecommunications facility is highly visible from critical recreation areas such as the beach and Memorial Park during the peak season from May 1 to October 15 of every calendar year.
 - e. The wireless telecommunications facility visually dominates and introduces a visually incompatible element into the setting, form, scale and character of a historic district, site, or

structure which is currently listed on or is eligible for listing on the National Register of Historic Places.

(Ord. of 9-18-2001, § 11.6.4)

Sec. 78-1311. Standards for architectural siting (AS) on existing structures.

Wireless telecommunications facilities proposing to locate on existing buildings structures, flagpoles, or utility poles must meet all the following criteria:

- (1) Antennas, receivers, lightning rods, guy wires, and any other wireless telecommunications facility equipment shall be attached to an existing building in such a manner as to not project above the roofline, ridgeline, peak, or steeple of the structure as observed from public lands and ways, or from historic sites and buildings.
- (2) A wireless telecommunications facility antenna or equipment attached to a building or structure roof shall not contrast with the color, texture, or linear orientation of the roofing materials.
- (3) No wireless telecommunications facility equipment shall be mounted on any structure or located on any property that is in violation of the BOCA National Property Maintenance Code, 1993 edition, or any other building code so adopted by the town council. Buildings or properties in violation of the BOCA National Building Code, 1993 edition, or any other building code so adopted by the town council, or any structure in a dilapidated condition shall be rehabilitated in a manner approved by the planning board prior to the attachment of wireless telecommunications facility equipment.
- (4) Wireless telecommunications facility equipment shall be designed to be visually compatible with the texture and color of the background building material.
- (5) Mitigation measures of architectural siting of a wireless telecommunications facility shall conform to the dominant architectural period of the host structure.
- (6) Wireless telecommunications facility equipment shall be located on the structure so as to be visually compatible with the rhythm and proportion of voids (windows and doors) and solids (facade) of the background structure.
- (7) Wireless telecommunications facility equipment shall not project beyond the facade of the building or structure in a manner that visually compromises the profile of the structure at the predominant angle of viewer observation. It is advised that wireless telecommunications facility equipment be visually disguised as architectural detail or incorporated into architectural detail where feasible, especially in locations within the historic districts, on historic structures of moderate to high historic/architectural value, or in areas of high viewer populations.
- (8) Ground facilities shall be screened from the street and all adjacent properties in all districts except the industrial district. Buffering shall consist of evergreen vegetation that achieves 90 percent yearround visual obstruction from all potential viewer populations at the time of planting, solid wooden fencing, earth mounding, or combination thereof. The planning board may approve a buffer which achieves less than 90 percent visual obstruction where the proposed ground facility is a building and the planning board determines that the location, style, and architectural detailing of the building are visually compatible with other buildings in the immediate vicinity of the site and with the character of the surrounding neighborhood.

(Ord. of 9-18-2001, § 11.6.5)

Sec. 78-1312. Amendment to approved application.

Any changes to an approved application made under this division must be approved by the planning board or the town planner and code enforcement officer in accordance with section 78-1309.

(Ord. of 9-18-2001, § 11.6.6)

Sec. 78-1313. Abandonment.

- (a) A wireless telecommunications facility that is not operated for a period of 12 consecutive months shall be considered abandoned. The code enforcement officer shall notify the owner of an abandoned facility, in writing, and order the removal of the facility within 90 days of the owner's receipt of the written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the code enforcement officer that the facility has not been abandoned.
- (b) If the owner fails to show that the facility has not been abandoned, the owner shall remove the facility. If the abandoned facility is not removed within 90 days from the owner's receipt of the original notice, the town may remove the facility at the owner's expense pursuant to 17 M.R.S.A. §§ 2851—2859. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads and reestablishment of vegetation.
- (c) If a surety has been given to the town for removal of the facility, the owner of the facility may apply to the planning board for release of the surety when the facility and related equipment are removed to the satisfaction of the planning board.

(Ord. of 9-18-2001, § 11.6.7)

Secs. 78-1314—78-1355. Reserved.