

ZONING

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[HISTORY: Formerly Chapter 113, which was adopted by the City Council on 3-25-1987 as Ord. No. 7-87.1. Revised in its entirety by the City Council on 01-20-1999 by Ord. No. 26-98; General syntax updates on 07-22-2020 by Ord. No. 2020.07.08.006 Amendments noted where applicable. Merged into 170 on 08-12-2015 by Ord. No. 2015.07.22-017]

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Mixed -Use

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LBW	Little Bay Waterfront District
O	OFFICE District
G	Gateway
CBD	Central Business District

Regulating Plan

General

Mixed Use

Residential

TOD	Transit Oriented Development
CWD	Cochecho Waterfront District

[HISTORY: Adopted by the City Council on 05-23-1979 as Ord. No. 15-79; Amended on 09-13-2013 by Ord. No. 2013.08.14-12; Amended on 02-26-2014 by Ord. No. 2014.01.22-001; Amended on 04-23-2014 by Ord. No. 2014.04.09-008; Amended on 08-12-2015 by Ord. No. 2015.07.22-017 Amendments noted where applicable.]

GENERAL REFERENCES - PLANNING BOARD – See Ch. 41. Site Plan Review- See Ch. 149. STREETs and SIDEWALKs – See Ch. 152. Subdivision of Land – See Ch. 155.

ARTICLE I

GENERAL PROVISIONS

170-1. Title.

This Chapter shall be known and may be cited as the "Zoning Ordinance of the City of Dover, New Hampshire."

170-2. Authority.

This Chapter is adopted pursuant to the authority granted by RSA 674:16.

170-3. Purpose.

This Chapter is an element of the Dover Master Plan and is designed to promote the health, safety, and the general welfare of Dover's residents by serving to facilitate the adequate provision of transportation, water, sewer, schools, parks and other public requirements; to encourage the maintenance of Dover's economic and aesthetic quality of life; and to encourage the most appropriate use of land throughout the City of Dover.

170-4. Interpretation.

The provisions of this Chapter shall be interpreted to be the minimum requirements adopted for the promotion of the health, safety, morals and the general welfare of the City of Dover. The provisions of this Chapter are not intended to repeal or in any way impair or negate any other lawfully adopted ordinance, regulation or rule. Whenever the regulations made under the authority hereof differ from those prescribed by any ordinance or regulation, that provision which imposes the greater restriction shall govern.

170-5. Applicability. [Amended on 06-10-87 by Ord. No. 13-87.]

All BUILDINGs or STRUCTUREs hereafter erected, reconstructed, ALTERED, enlarged or relocated or all future use of premises in the City of Dover shall be in conformity with the provisions of this Chapter. This Chapter shall not apply to existing BUILDINGs or STRUCTUREs, nor to the existing use of any BUILDING or STRUCTURE or of land to the extent to which it is used at the time of enactment of this Chapter. Furthermore, if the PLANNING BOARD has formally accepted an application for development prior to the first legal notice of a proposed change to this Chapter, the Building Official shall not withhold a BUILDING permit, and the proposed regulation shall not affect the accepted application.

ARTICLE II

TERMINOLOGY

170-6. Word Usage and Definitions. [Amended on 9-24-80 by Ord. No. 15-80; Amended on 6-10-87 by Ord. No. 13-87; Amended on 9-14-88 by Ord. No. 15-88; Amended on 11-30-88 by Ord. No. 24-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 04-03-91 by Ord. No. 01-91; Amended on 09-01-93 by Ord. No. 20-93; Amended on 09-15-93 by Ord. No. 19-93; Amended on 10-20-93 by Ord. No. 28-93; Amended on 08-24-94 by Ord. No. 09-94; Amended on 03-18-98 by Ord. No. 02-98; Amended on 02-17-99 by Ord. No. 25-98; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 03-19-2003 by Ord. No. 05-03; Amended on 03-21-2007 by Ord. No. 01-07; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13; Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 08-19-2015 by Ord. No. 2015.07.22-017; Amended on 06-22-2016 by Ord. No. 2016.06.08-010; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006, Amended on 07-22-2020 by Ord. No. 2020.07.08.007, Amended on 09-14-2022 by Ord. No. 2022.08.10.010..]

- A. For the purposes of this Chapter, the present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. The word "shall" is mandatory; the word "may" is permissive; the words "used" or "occupies" include the words "intended, designed or arranged to be used or occupied," and certain terms or words shall be interpreted as follows:
- B. Words and terms appearing in CAPITAL LETTERS throughout this Chapter shall have the meanings indicated below. Other Land Use/Planning related words and terms not defined in this Chapter shall rely on the definition(s) contained within *A Planners Dictionary* published and updated by the American Planning Association:

ABANDONED SIGN means any SIGN that does not display a well-maintained message for a consecutive one-hundred eighty (180) day period, and/or the owner of said SIGN cannot be located after reasonable efforts have been made, and/or said SIGN is no longer fully supported by the STRUCTURE designed to support the SIGN for a consecutive one-hundred eighty (180) day period, and/or the SIGN no longer advertises bona fide business and/or products sold for a consecutive one-hundred eighty (180) day period. The Zoning Administrator shall direct the removal of any SIGN which meets this definition.

ABUTTER means:

- (1) The owner of record of a parcel of land located in New Hampshire and adjoins or is directly within two hundred (200) feet (including land across the STREET or waterway) of the proposed site under consideration by the PLANNING BOARD.

- (2) For the purposes of receiving testimony only, and not for purposes of notification, the term "ABUTTER" shall include any person or entity who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- (3) In the case of an abutting property being under a condominium or other collective form of ownership, the term "ABUTTER" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of units within the association, which are located within two hundred (200) feet of the common property line shall be notified only by first class mail.
- (4) For purposes of notification and receiving testimony, ABUTTER means all affected towns and the regional planning commission in the case of a development having regional impact, as determined by the PLANNING BOARD.
- (5) For purposes of notification, ABUTTER ownership information for LOTs located in Dover, shall be obtained through the City's Tax Assessment Office.

ACCESSORY DWELLING UNIT means a secondary DWELLING UNIT (a) attached and subordinate to a SINGLE FAMILY DWELLING or (b) constructed within a detached garage that is accessory and subordinate to a SINGLE FAMILY DWELLING. See Section 170-24 for the ACCESSORY DWELLING UNIT regulations.

ACCESSORY STRUCTURE means a STRUCTURE with a minimum FLOOR AREA of two hundred (200) square feet which exists on the same LOT and within the same zoning district as the PRINCIPAL BUILDING and which shall be customarily incident and subordinate to the PRINCIPAL BUILDING subject to the provisions of Chapter 170-10 E.

ACCESSORY USE means a use existing on the same LOT and within the same zoning district as the principal use which shall be customarily incident and subordinate to the principal use, subject, however, to the provisions of 170-10 E.

ADULT BOOKSTORE AND/OR VIDEO STORE means a place of business that devotes more than fifteen percent (15%) of the total display, shelf, rack, table, stand or FLOOR AREA, for the display and sale of the following: [Added]

- (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other

forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or

- (2) Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1, other than birth control devices.

An **ADULT BOOKSTORE** and/or **VIDEO STORE** does not include an establishment that sells books, periodicals or videos as an incidental or accessory part of its principal stock and trade and does not devote more than fifteen percent (15%) of the total **FLOOR AREA** of the establishment to the sale of books, periodicals or videos.

ADULT CABARET means a night club, bar, restaurant or similar establishment which during a substantial portion of the total presentation time, features live performances that meet the definition of "harmful to minors" and/or "a sexual conduct" as set forth in RSA 571-B:1 and/or shows films, motion pictures, video cassettes, slides or other photographic reproductions, which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

ADULT DAY CARE means a facility used for the care of three (3) or more adults for less than twenty-four (24) hours per day who are in need of supervision or assistance with daily living activities. The facility may provide for dining, recreation activities, education and counseling services, and **ACCESSORY USES** related to the care of adults in need.

AGRICULTURE - See RSA 21:34-a.II. **AGRICULTURE** shall not include marketing or selling at wholesale or retail, except where permitted as part of a **ROADSIDE FARM STAND** or where the retail sale of agricultural or **FARM** products raised on site is a permitted use. One **SINGLE FAMILY DWELLING** shall be permitted as an accessory to the principle use.

ALTER or **ALTERATIONS** means any change involving the structural frame of a **BUILDING** or use of a **BUILDING**.

ALTERNATIVE ENERGY SYSTEM means a system where energy is derived from a renewable natural source, such as the sun, wind, tides, or waves.

ALTERNATIVE TOWER STRUCTURE means the use of **STRUCTURES** such as man-made trees, clock **TOWERS**, bell steeples, rooftops on **BUILDING**s five (5) stories or more, light poles, and similar Alternative-design mounting

STRUCTURES that camouflage or conceal the presence of **ANTENNAS** or **TOWERS** and their appurtenances.

ANTENNA means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, repeater, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

APPLICANT means any person, agent, firm, association, partnership or corporation that makes application to a land use board, pursuant to the rules and regulations of this Chapter.

ASSESSED PROPERTY means any land or **BUILDINGS** comprising **NEW DEVELOPMENT** that is subject to an **IMPACT FEE ASSESSMENT** under this Article.

ASSESSMENT means a notification issued by the City of Dover, its **PLANNING BOARD**, or its Building Inspector, which states the amount of an **IMPACT FEE** due on an **ASSESSED PROPERTY** and the responsibilities, conditions or schedules pertinent to the process and timing of **IMPACT FEE** payments to the City.

ASSISTED LIVING FACILITY means a facility, licensed under RSA 151-E, that provides housing and supportive services and care for more than twelve (12) elderly residents who require assistance with daily living activities but do not require the skilled nursing and medical care provided in a **NURSING HOME**. Such supportive services include the provision of meals, housekeeping, laundry, transportation, daily personal care, dispensing of medications and twenty-four (24) hours per day staffing. An **ASSISTED LIVING FACILITY** includes a community dining **ROOM** in which meals are provided to all residents, and each individual assisted living unit may also have a kitchenette. Other than any accommodations provided for use by the facility's staff, only assisted living units are permitted as part of an **ASSISTED LIVING FACILITY**.

ASSEMBLY HALL means a **BUILDING** or a portion of a **BUILDING**, not to exceed five thousand (5,000) square feet, used for groups of people to gather for an event or regularly scheduled program. **ASSEMBLY HALLS** include but are not limited to **SERVICE CLUB**, religious institutions, cultural and educational lecture/performance halls, banquet halls, and similar facilities.

AUTO SERVICE means a place of business which offers as a service the repair of automobiles. Such "AUTO SERVICE" place shall not be construed to be a VEHICLE REFUELING /RECHARGING STATION.

BED AND BREAKFAST means a residential STRUCTURE consisting of nine (9) or less bedrooms rented on a temporary short term basis for overnight sleeping purposes. Said facility shall have common eating and living areas and provide on-site management on a twenty-four (24) hour basis. Breakfast shall be the only meal served and shall be served to registered guests only.

BERM means a mound of EARTH that may contain stumps of sufficient HEIGHT to serve as sight, sound, sand and dust screening of operations in an EXCAVATION SITE.

BLOCK means a tract of land bounded by STREETS or by a combination of STREETS and public land, railroad RIGHTS OF WAY, waterways or other barriers to the continuity of a development.

BLOCK CORNER means where two public STREETS meet on a BLOCK.

BLOCK FACE means the aggregate of all the BUILDING facades on one side of a BLOCK.

BUILD TO LINE means a line parallel to the STREET RIGHT-OF-WAY LINE representing the distance that part of the BUILDING must be located. Front porches, stairs and handicap ramps may extend beyond the BUILD TO LINE up to half their depth. If locating the BUILDING at the BUILD TO LINE is not possible due to SETBACK or buffer requirements of Chapter 170-27 or Chapter 170-27.1, the BUILDING shall be located as close to the BUILD TO LINE as feasible. For parcels with no FRONTAGE, the BUILD TO LINE shall be calculated from the boundary parallel to the nearest STREET RIGHT-OF-WAY LINE. For parcels with FRONTAGE on a tidal waterway, the BUILD TO LINE may be a one hundred (100) foot SETBACK, unless reduced via a Conditional Use Permit from the reference line, no matter the distance to the STREET RIGHT-OF-WAY LINE.

BUILDING means any STRUCTURE built for the support, shelter or enclosure of persons, animals, chattels or property of any kind and which is constructed and permanently affixed on the land. Such "BUILDING" includes open decks, open breezeways and any roofed areas. This in no way is to be construed to include a trailer, MANUFACTURED HOME or any other like product. For the purposes of measuring SETBACKS, eaves and uncovered porches accessible ramps or steps may encroach into the side, REAR and front SETBACKS or a distance of up to

three (3) feet. Improvements made at ground level (patio, pads, deck) are not required to meet SETBACKS.

BULK means a term used to indicate the physical size, SETBACKs, and location of a BUILDING upon a LOT.

BUSINESS FLOOR AREA - [Repealed on 08-08-2018 by Ord. No. 08-08-2018-009]

BUSINESS FRONTAGE means the length along the GROUND FLOOR of a BUILDING front, having FRONTAGE on the STREET, which is occupied by a separate and distinct principal use; or the length along the GROUND FLOOR of a BUILDING side, having FRONTAGE on a STREET, which is occupied by a separate and distinct principal use or by the same principal use which occupies the front of said BUILDING.

CERTIFIED SOIL SCIENTIST means a person who, by reason of special knowledge of pedological principles acquired by professional education and practical experience as specified by RSA 310-A:84, is qualified to practice soil science and who has been duly certified by the State Board of Natural Scientists.

CERTIFICATE OF OCCUPANCY – See Chapter 68 of the Code of the City of Dover, titled “Building Construction”, Section 68-15.

CHILD CARE FACILITY means a non-residential facility used for the care of children for periods of less than twenty-four (24) hours per day, and/or the provision of educational services commonly associated with preschool, nursery schools or kindergartens. A CHILD CARE FACILITY requires Technical Review Committee review.

CHILD CARE HOME means an occupied SINGLE FAMILY DWELLING in which child day care is provided for less than twenty four (24) hours per day, except in emergencies. A CHILD CARE HOME is subject to the CUSTOMARY HOME OCCUPATION requirements and requires a CUSTOMARY HOME OCCUPATION Certificate of Use. There are two types of CHILD CARE HOMES, as follows:

- (1) Group CHILD CARE HOME is a child day care for seven (7) to twelve (12) preschool aged children from one or more unrelated families. The twelve (12) children shall include all children residing with the caregiver in the home, except children ten (10) years of age or older. In addition to the twelve (12) children, up to five (5) children enrolled in a full day school program may also be cared for up to five (5) hours per day on school days and all day during

school holidays. Applications require Technical Review Committee review, are subject to possible Site Review and PLANNING BOARD approval per Section 149-4.D of the Site Review Regulations.

- (2) Family CHILD CARE HOME is a child day care for up to six (6) preschool aged children from one or more unrelated families. The six (6) children shall include all children residing with the caregiver in the home, except children ten (10) years of age or older. In addition to the six (6) children, up to three (3) children enrolled in a full day school program may also be cared for up to five (5) hours per day on school days and all day during school holidays. A Family CHILD CARE HOME for up to three (3) children (at any one time and not including the provider's own children) shall not require a CUSTOMARY HOME OCCUPATION Certificate of Use and does not require Technical Review Committee review.

CIVIC BUILDING means a BUILDING operated by not-for-profit organizations dedicated to arts, culture, education, recreation, government, transit, and municipal parking, or for use approved by the legislative body.

CIVIC SPACE means an outdoor area dedicated for public use.

COLLECTION means the actual delivery of payment of an ASSESSMENT of an IMPACT FEE to the City of Dover on behalf of an ASSESSED PROPERTY.

COMMENCEMENT OF CONSTRUCTION means the beginning of the physical construction of an approved STRUCTURE. Said construction shall include the erection of any portion of a STRUCTURE above or below grade level.

COMMERCIAL EXCAVATION means EXCAVATION of EARTH intended for commerce, excluding EXCAVATION that is strictly conducted for the purpose of ALTERATIONS, renovation, improvement or construction to the property on which the EXCAVATION takes place. Any material leaving the property for whatever reason is considered to be a commercial operation, except agricultural activities, as defined by RSA 21:34-a.

COMMERICAL PARKING FACILITY means an area of OFF-STREET PARKING, where, for a fee, or permit, motor vehicles may be stored for the purpose of temporary, daily, weekly, or overnight OFF-STREET PARKING. Said facility may provide shuttle or park-n-ride services.

COMMERCIAL RECREATION means leisure time activities conducted at prescribed places, sites, or fields as a principal use, in order to obtain profit for a

private group, organization, or individual. For the purpose of this ordinance, **COMMERCIAL RECREATION** may include but not be limited to: (a) mechanical and/or electronic operating games (b) animated mechanical devices and/or rides (c) live entertainment; and (d) food concessions will be allowed by permit.

COMMON YARD means a planted private **FRONTAGE** wherein the facade is set back from the front property line.

CONGREGATE CARE FACILITIES means a residential facility for elderly persons containing individual, one (1) and two (2) bedroom units. Each unit may also have a kitchenette. The facility shall contain common dining facilities and amenities such as housekeeping, transportation and organized social and recreational activities, and may include limited medical services on site. This facility is intended for and solely occupied by persons sixty-two (62) years of age or older and thereby qualifies as “housing for older persons” under state law.

CONSERVATION LOT means a LOT created solely for the purpose of land conservation. The **CONSERVATION LOT** must contain no less than fifty percent (50%) developable uplands, but will have no **DEVELOPMENT RIGHTS**. The **CONSERVATION LOT** may be owned by a private, nonprofit organization, which has as its purpose the preservation of **OPEN SPACE**, or dedicated to a public entity. **CONSERVATION LOTs** must meet the required minimum LOT size and **SETBACKs**. **CONSERVATION LOTs** do not need to meet the minimum **FRONTAGE** requirements. **CONSERVATION LOTs** must be created following the regulations outlined in Chapter 157, Subdivision of Land.

CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, wholly within the City, except in the case of **STATIONARY MANUFACTURING PLANTS**, whose perimeter is not defined by the City’s boundaries.

CONTINUING CARE COMMUNITY FACILITY means a residential development that provides multiple elements of adult living, including independent living units, assisted living units and skilled nursing care, enabling residents to live at a single location as their medical needs change over time. This facility is licensed pursuant to RSA 420-D and includes common dining, recreation and health facilities and other common areas; provides services such as medical care, programmed social activities; and may include limited accessory retail and personal services. This facility is intended for and solely occupied by persons sixty-two (62) years of age or older and thereby qualifies as “housing for older persons” under state law.

COUNTRY CLUB means a nonprofit establishment involving the use of a golf course, swimming pool or tennis courts and a STRUCTURE designed as a center for these activities within which food and drink may be served to members of said club and their guests. The term "COUNTRY CLUB" shall not be so construed as to include within its meaning any operation conducted with a profit-making intent.

COVERAGE means the percentage of area of a LOT which is occupied by the physical limits of a BUILDING or BUILDINGS. Roofed area to the extent of the drip line shall constitute the physical limits of a BUILDING.

COVER CROP means vegetation designed to prevent erosion of the soil.

CUSTOMARY HOME OCCUPATION means an occupation carried on as a secondary use in a DWELLING UNIT or accessory BUILDING by the occupant of such unit.

DEVELOPMENT IDENTIFICATION SIGN means a SIGN attached to a screening wall or landscape planter designed and intended to identify an approved multi-lot residential subdivision or multi-tenant site plan, located at the principal vehicular entry points.

DEVELOPMENT RIGHTS means the legal claim to construct or develop specified land uses within specified densities and/or dimensional limits as granted by the City of Dover Zoning Ordinance.

DIMENSION STONE means rock that is cut, shaped or selected for use in BLOCKS, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of BUILDINGS, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. DIMENSION STONE includes quarry BLOCKS from which sections of DIMENSION STONE are to be produced. DIMENSION STONE does not include EARTH as defined below.

DIRECT ILLUMINATION means that the material of which a SIGN is made is itself illuminated (e.g. neon light).

DRIVE-IN SERVICE means service whereby the customer need not leave his vehicle in order to obtain the product offered for sale.

DWELLING, MULTI-FAMILY means a BUILDING containing more than four (4) DWELLING UNITS.

DWELLING, SINGLE-FAMILY means a detached BUILDING containing one (1) DWELLING UNIT only.

DWELLING UNIT means one or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the DWELLING UNIT for exclusive use of a single family maintaining a household.

EARTH means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.

EDUCATIONAL INSTITUTION, POST SECONDARY means an institute of higher education that provides a curriculum of academic instruction beyond the high school level, is licensed by the State of New Hampshire, and is accredited by an approved agency.

EDUCATIONAL INSTITUTION, K-12 means a facility, licensed by the State of New Hampshire, that provides curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

ELDERLY ASSISTED CARE HOME means a residential facility permanently housing six (6) to twelve (12) elderly residents with common dining facilities and ACCESSORY USES typically needed by elderly persons. The Zoning Board of Adjustment may increase the number of residents through the granting of a special exception.

ENERGY STORAGE is the capture of energy produced at one time for use at a later time. A device that stores energy is generally called an accumulator or battery. Energy comes in multiple forms including radiation, chemical, gravitational potential, electrical potential, electricity, elevated temperature, latent heat and kinetic. Energy storage involves converting energy from forms that are difficult to store to more conveniently or economically storable forms.

EXCAVATION means a land area that is used, or has been used, for the commercial taking of EARTH, including all SLOPES.

EXCAVATION AREA means the area within an EXCAVATION SITE where EXCAVATION has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.

EXCAVATION SITE means any area of CONTIGUOUS land in common ownership upon which EXCAVATION takes place.

EXISTING EXCAVATION means any EXCAVATION that lawfully existed as of August 24, 1979, from which EARTH material of sufficient weight or volume to be commercially useful had been removed during the two (2) year period before August 24, 1979.

EXISTING TOWERS AND ANTENNAS means any TOWER or ANTENNA lawfully constructed or permitted prior to the adoption of this ordinance. Additionally, any TOWER or ANTENNA lawfully constructed in accordance with this ordinance that predates an application currently before the PLANNING BOARD.

EXPANSION (pertaining to EXCAVATIONS) means

(1) of EXISTING EXCAVATIONS means EXCAVATION beyond the limits of the City and the area which on 8/24/79 had been CONTIGUOUS to and in common ownership with the EXCAVATION SITE and has been appraised and inventoried for tax purposes as part of the same tract as the EXCAVATION SITE.

(2) of STATIONARY MANUFACTURING PLANTS means to any CONTIGUOUS lands which were in common ownership with the site of the plant on 8/4/89.

EXTENSION, BUILDING means any action which shall cause the FLOOR AREA or volume of a STRUCTURE to be increased.

EXTENSION, USE means the enlargement of a business, industrial or residential activity beyond the limits in use at the time this Chapter was passed.

EXTERNAL ILLUMINATION means a separate light fixture that shines onto a SIGN in order to illuminate it.

FAA means an acronym meaning Federal Aviation Administration.

FAMILY - [Repealed on 08-01-90 by Ord. No. 8-90]

FARM - See RSA 21:34-a.I. See also definition of AGRICULTURE

FARM ANIMALS means animals that are commonly raised or kept in an agricultural setting, including, but not limited to, chickens, roosters, turkeys,

ducks, pigs, sheep, goats, horses, cows, cattle, llamas, emus, ostriches, donkeys, mules, buffalo, bison, alpacas, elk, deer and reindeer; provided, however, that chickens, sheep or goats, totaling six (6) or fewer, shall not be considered to be included.

FARM ANIMALS FOR FAMILY USE means animals commonly raised or kept by a family for non-commercial purposes on a LOT containing a one or two family dwelling. Includes chickens, sheep or goats totaling six (6) or fewer, but does not include roosters.

FCC means an acronym meaning Federal Communications Commission.

FENCE means a freestanding STRUCTURE of metal, masonry, composition of wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

FLASHING SIGN means any directly or indirectly illuminated SIGN which changes the intensity of illumination so as to result in changes in light, color, director or animation. Included in this definition shall be electronic changeable message boards or SIGNS of similar technologies, excluding those deemed necessary for the public safety and welfare by Federal, State or municipal authorities.

FLOOR AREA means the sum of the gross horizontal areas of all floors of any BUILDING or BUILDINGS on a LOT measured from the exterior walls. In particular, the "FLOOR AREA" shall include:

- (1) In dwellings, any basement space designed to be used for residential purpose.
- (2) In other than dwellings, any basement or cellar space used for any purpose.
- (3) In all BUILDINGS, interior balconies, mezzanines, roofed porches or terraces and all spaces other than basement or cellar spaces with structural head ROOM of at least seven (7) feet.

FLOOR RATIO - [Repealed 08-01-90 by Ord. No. 8-90]

FREESTANDING SIGN means a SIGN permanently erected on a freestanding frame, mast or pole and not attached to any BUILDING. A-frame SIGNS shall not be considered freestanding but rather a temporary SIGN. Each individual tenant panel on a multi-tenant SIGN shall require a SIGN permit and shall be counted towards each tenants' permitted number of SIGNS and SIGN AREA.

FRONTAGE means the linear distance measured along the front LOT LINE between the points of intersection with the side LOT LINES. "FRONTAGE" along cul-de-sacs shall be the linear distance at the appropriate FRONT YARD BUILDING set back depth from the front LOT LINE between the points of intersection with the side LOT LINES. For the purpose of measurement, LOT "FRONTAGE" shall be continuous and measured along the joining boundary of the front LOT LINE and a public right-of-way.

FRONTAGE, in the CBD means the area between a BUILDING facade and the public STREET, inclusive of its built and planted components.

GALLERY means a private FRONTAGE conventional for retail use wherein the facade is aligned close to the front property line with an attached cantilevered shed or lightweight colonnade overlapping the SIDEWALK.

GEOHERMAL ENERGY means a system generating electricity by tapping into steam or hot water reservoirs underground; the heat is used to drive an electrical generator.

GROUND FLOOR means the STREET level floor of a STRUCTURE.

GROUND MOUNTED SOLAR means a system installed on the ground rather than on the roof of a building. This allows the solar panels to be placed anywhere on the property and mounted at any height, from a few inches to many feet off the ground. Ground mounted solar may include motorized ground-mounts that track the sun throughout the day, ensuring the panels are facing the sun at all times.

GROUP HOME FOR MINORS means a group boarding home for minor children and others attending Grades K - 12 which is issued a general or intermediate license by and operated in accordance with standards promulgated by the State of New Hampshire Department of Health and Human Services. Such use may include ACCESSORY USEs such as educational and counseling programs which are directly related to the primary purpose of the home.

HAZARDOUS WASTE/MATERIAL means a material, waste or combination of materials or wastes which, because of the quantity, concentration or infectious characteristics, may cause or significantly contribute to illness or present a substantial hazard to health, safety or welfare or to the environment.

HEIGHT when referring to a telecommunications TOWER or other STRUCTURE means the distance measured from ground level to the highest point on the TOWER or other STRUCTURE or appurtenance, even if said highest point is an ANTENNAS or other appurtenance.

HEIGHT OF BUILDING means the vertical distance measured from the average grade level adjoining the BUILDING to the highest level of the roof surface or front PARAPET, whichever is greater. Television and radio receiver ANTENNAS and photovoltaic systems as well as church steeples shall not be included in this calculation.

HEIGHT RATIO - [Repealed 08-01-90 by Ord. No. 8-90]

HIGH INTENSITY SOIL MAP (HIS) means a map prepared using the methods prescribed by the Society of Soil Scientists of Northern New England, in the publication HIGH INTENSITY SOIL MAPs for New Hampshire, January 1987, as amended.

HOME BASED AGRICULTURAL ACTIVITIES means the sale of products associated with raising poultry/bees/or like animals, or harvesting of herbs, flowers or vegetables/fruit. Products must be grown on-site and may be sold in either in raw or value added forms.

HOTEL means a BUILDING consisting of ten (10) or more ROOMs accessed by a common hallway and designed for, or used commercially as temporary living quarters for persons who are lodged with or without meals.

IMPACT FEE means a fee or ASSESSMENT imposed upon development, including subdivision, BUILDING construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the City of Dover or the Dover School District, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and RIGHTS OF WAY; municipal OFFICE facilities; public school facilities; public safety facilities; solid waste COLLECTION, transfer, recycling, processing and disposal facilities; public library facilities; and PUBLIC RECREATIONAL FACILITIES not including PUBLIC OPEN SPACE.

INTERMITTENT STREAM means a stream that flows for sufficient times of the year to develop and maintain defined channels but which may not flow during dry portions of the year.

INTERNAL ILLUMINATION means illumination that is located within a translucent or otherwise diffusive SIGN material.

JUNKYARD means an open area where waste, used or secondhand materials are brought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles. The term "JUNKYARD" shall not include uses established entirely within enclosed BUILDINGS.

JUNKYARD, MOTOR VEHICLE means includes any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two (2) or more unregistered motor vehicles which are no longer operable or in condition for legal use on the public highways or used parts of motor vehicles or old iron, metal, glass, paper, cordage or other waste or discarded or secondhand material which has been a part or intended to be a part of any motor vehicles, the sum of which parts or materials shall be equal in BULK to two (2) or more motor vehicles. "MOTOR VEHICLE JUNKYARD" shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn materials which are parts of a motor vehicle or cut up the parts thereof.

KENNEL means any BUILDING(s) or land operated as a business for the boarding, breeding, training, or selling of five (5) or more dogs, cats or other household pets.

LANDSCAPE AREA means the area unoccupied by pavement or STRUCTURES and open to the sky in either a landscaped or grassed condition. May include recreational fields, lawns, and public parks that do not possess significant conservation features.

LIGHT INDUSTRY means all manufacturing and assembly processes carried on completely within a STRUCTURE, and involving no permanent outside storage of equipment or materials (except as a customary ACCESSORY USE in connection with the permitted activities with the STRUCTURES), unless such storage is approved by the Dover PLANNING BOARD. This term shall not be interpreted to include any industry, the operations of which shall result in significant objectionable noise, glare, vibration or odor which would constitute a NUISANCE in an industrial district and which exceed the maximum levels of adjacent activities.

LOADING BERTH means a berth designed for the on-loading and off-loading of trucks and other commercial vehicles.

LOT means a parcel of land which fronts on and has ingress and egress by means of a public vehicular right-of way and is occupied by, or is intended to be occupied by one (1) **PRINCIPAL BUILDING** and its accessory **BUILDINGS** or uses customarily incidental to it, together with such **OPEN SPACES** and yards as are required by this Chapter. More than one (1) **PRINCIPAL BUILDING** may be placed on a **LOT** located in the Central Business or Gateway District. More than one (1) **PRINCIPAL BUILDING** may also be placed on a **LOT** in all other districts with **PLANNING BOARD** approval for non-residential developments, **MULTI-FAMILY DWELLING** developments, and **OPEN SPACE** subdivisions.

LOT, CORNER means a **LOT** abutting upon two (2) or more **STREETs** at their intersection. The side of the **CORNER LOT** that fronts on the **STREET** that provides the address for the property shall be considered the front, and the side(s) of the **CORNER LOT** that front on any other **STREETs** shall be considered the abut-a-street.

LOT LINE means a line of record bounding a **LOT** which divides one **LOT** from another **LOT** or from a public or private **STREET** or any other **PUBLIC SPACE**.

LOT WIDTH means the width of a **LOT** along a straight line parallel to the front **STREET** line and lying at a distance from said **STREET** line equal to the required minimum **FRONT YARD SETBACK** for said **LOT**.

MANUFACTURED HOUSING means any **STRUCTURE**, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site, is three hundred and twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. **MANUFACTURED HOUSING** shall not include presite built housing as defined in RSA 674:31-a.

MANUFACTURED HOUSING PARK or **MOBILE HOME PARK** means any plot of ground upon which two (2) or more **MANUFACTURED HOMES**, occupied for dwelling or sleeping purposes, are located.

MANUFACTURED HOUSING SUBDIVISION [Repealed on 11-28-2012 by Ord. No. 2012.11.14-24.]

MARINA means a facility for storing, servicing, fueling, berthing, securing and launching of private pleasure marine craft that may include the sale of fuel and incidental supplies for boat owners, crews and guests.

METEOROLOGICAL TOWER (MET TOWER) means the TOWER, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, MET TOWERS shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a SMALL WIND ENERGY SYSTEM.

MODIFICATION in relation to a SMALL WIND ENERGY SYSTEM means any change to the system that materially ALTERS the size, type or location of the SMALL WIND ENERGY SYSTEM. Like-kind replacements shall not be construed to be a MODIFICATION.

MOTEL means a BUILDING consisting of ten (10) or more ROOMS having direct outside access and designed for, or used commercially as temporary living quarters for persons who are lodged with or without meals.

NEIGHBORHOOD means a grouping of STRUCTURES with more clearly evident relationship to one another than to other STRUCTURES in the community.

NET METERING means the difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's ALTERNATIVE ENERGY SYSTEM that is fed back into the electric distribution system over a billing period.

NEW DEVELOPMENT means an activity that results in:

- (1) The creation of a new DWELLING UNIT or units; or
- (2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of DWELLING UNITS; or
- (3) Construction resulting in a new non-residential BUILDING or a net increase in the FLOOR AREA of any non-residential BUILDING; or
- (4) The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of IMPACT FEE ASSESSMENTS.

NEW DEVELOPMENT shall not include the replacement of an existing **MANUFACTURED HOME** or the reconstruction of a **STRUCTURE** that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on public capital facilities.

NONCONFORMING USE means a lawful use that does not conform to the prescribed use regulations of the district in which it is located.

NUISANCE means a factor generally recognized to be undesirable, such as odor, noise, glare or vibration.

NURSING HOME means a residential facility for elderly persons that is licensed by the State, containing a common dining facility and **ACCESSORY USES** typically needed by elderly residents.

OFFICE means a place of business which may fall under the following categories:

Accessory. An **OFFICE** facility that is incidental and accessory to another business or sales activity that is the primary use of the **STRUCTURE** or site.

Administrative Business Professional. An establishment providing direct, "over-the-counter" services to consumers (e.g., insurance agencies, real estate **OFFICES**, travel agencies, utility company **OFFICES**, etc.) and **OFFICE**-type facilities occupied by businesses providing professional services and/or engaged in the production of intellectual property. This use includes: accounting, auditing and bookkeeping services, advertising agencies, airline, lodging, chain, and rental car company reservation centers, architectural, engineering, planning and surveying services, attorneys, legal services, commercial art and design services, computer software and hardware design, counseling services, court reporting services, data processing services, detective agencies and similar services, educational, scientific and research organizations, employment, stenographic, secretarial and word processing services, insurance claim processing, literary and talent agencies, mail order and e-commerce transaction processing, management and public relations services, media postproduction services, photography and commercial art studios, police facility used as an **OFFICE** where there are no jail detention facilities or storage of vehicles except the parking of police cars, psychologist,

TELECOMMUNICATIONS FACILITY design and management, telemarketing, writers and artists OFFICES;

Government. An administrative, clerical, or public contact OFFICE of a government agency, including postal facilities, together with the incidental storage and maintenance of vehicles.

Medical. An OFFICE or health facility providing health services including, without limitation, preventative and rehabilitation treatment, diagnostic services, testing and analysis. This use includes offices providing medical, dental, surgical, rehabilitation, podiatric, optometric, chiropractic and psychiatric services, and medical or dental laboratories incidental to these OFFICES, but exclude inpatient services and overnight accommodation.

OFF-SITE IMPROVEMENTS means those public facility improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision PLAT or site plan approval by the PLANNING BOARD. Such OFF-SITE IMPROVEMENTS shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development.

OFF-STREET PARKING means parking facilities located in city or privately owned LOTS and STRUCTURES.

OPEN SPACE means land that is not built upon or substantially ALTERED by human activity including open fields, such as meadows and farmland, and forest as well as undeveloped shorelands and waterbodies.

ORDINARY HIGH WATER MARK means the line on shore, running parallel to the main stem of the river, established by the fluctuations of the water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristic of the surrounding areas.

OUTBUILDING – see ACCESSORY STRUCTURE

PARAPET means a low protective wall or railing along the edge of a raised STRUCTURE such as a roof or balcony.

PARKING SPACE means an off-Street area available with paved surface, accessible and suitable for parking one (1) motor vehicle.

PERSONAL SERVICE ESTABLISHMENT means a commercial use, the primary concern of which is the rendering of services rather than the sale of products. "Primary concern" shall mean less than fifty percent (50%) of the revenues from such commercial use shall be gained from the sale of products. A "PERSONAL SERVICE ESTABLISHMENT" shall not be construed to include a gasoline service station.

PLANNING BOARD means the PLANNING BOARD of the City of Dover.

PLAT means a map or plan of a subdivision or a site plan, prepared by a registered surveyor or engineer in compliance with all applicable provisions of the Zoning Ordinance (Ch. 170), the Site Review Regulations (Ch. 149), and the Subdivision Regulations (Ch.155) of the City of Dover.

PORCH means a private FRONTAGE set back from the front property line with an attached porch permitted to encroach beyond the BUILD TO LINES.

POWER GRID means the transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

PRINCIPAL BUILDING means the main BUILDING on a LOT, usually located toward the FRONTAGE.

PROJECTING SIGN means a SIGN attached to a BUILDING with the plane of the SIGN at an angle to the plane of the wall of the BUILDING.

PUBLIC ART means works of art in any media that has been planned and executed with the specific intention of being sited or staged in the physical public domain, usually outside and accessible to all.

PUBLIC OPEN SPACE means a parcel of land essentially unimproved and principally intended for OPEN SPACE preservation, natural resource conservation, or similar uses. For the purposes of this Article, City parks that do not include "PUBLIC RECREATION FACILITIES" constitute PUBLIC OPEN SPACE.

PUBLIC RECREATION means leisure time activities open to the public, subject to reasonable limitations as to participation, and conducted at prescribed places, sites or fields by non-profit corporations or charitable organizations. The non-profit organization or charitable organization may either rent or own the site. Food concessions will be allowed by permit.

PUBLIC RECREATION FACILITIES means the land and facilities owned or operated by the City of Dover, other than PUBLIC OPEN SPACE, that are used or designed for the conduct of recreational sports or recreation programs, and which include equipment or substantial improvements to the land to provide indoor or outdoor PUBLIC RECREATION opportunities. PUBLIC RECREATION FACILITIES may also include those portions of PUBLIC OPEN SPACE parcels that are improved with developed trail systems for uses such as hiking or cross country skiing.

PUBLIC SPACE means open to public view or access.

PUBLISHING FACILITY means a STRUCTURE or part of a STRUCTURE, with OFFICE space and production facilities, which is used for producing newspapers, magazines, books and/or other related published materials. For the purpose of this definition, production facilities shall include a printing press and/or similar equipment.

REAR means the private back portion of a property.

RECEIVING AREA means a defined area within a TDR DISTRICT to which DEVELOPMENT RIGHTS are transferred resulting in more efficient and intense use of suitable development sites.

RECLAMATION means the restoring of an EXCAVATION SITE to a standard at least equal to those outlined in Section 170-29.8.

REGULATING PLAN means a zoning map or set of maps that shows the sub-districts subject to regulation by Section 170-20.

REVOCAION means the revoking of the approved extraction permit by the PLANNING BOARD. The REVOCAION requires ceasing operations until such time as the owner or operator can bring the operation into compliance, and subsequently reapply for permitted status with the PLANNING BOARD at a regular meeting using standard application steps as outlined in this article.

RIGHTS OF WAY means a public or private area that allows for the passage of people, goods, and/or utilities. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

RIGHT-OF-WAY LINES means the lines that form the boundaries of the RIGHT-OF-WAY.

ROOFTOP SOLAR mean a photovoltaic system that generates electricity by capturing solar thermal energy and is mounted on the rooftop of a residential or commercial building or structure

ROOM means an unsubdivided portion of the interior of a DWELLING UNIT, excluding bathrooms, closets, hallways and service porches.

ROADSIDE FARM STAND means an ACCESSORY USE where permitted AGRICULTURE products grown on site are sold.

ROOMING HOUSE means any BUILDING in which ROOMS are rented, leased or otherwise made available for compensation to not more than ten (10) persons, for longer than one night, but not requiring a long term lease. Said ROOMS being for a sleeping purpose and containing communal bathroom facilities and cooking facilities.

SELF-SERVICE STORAGE FACILITY means a building or a group of buildings consisting of individual, self-contained units of various sizes rented or leased for self-storage of customers' property. Internally accessed facilities shall be considered warehousing but are still required to have the parking and screening requirements of externally accessed self-storage facilities.

SENDING AREA means a defined area within a TDR DISTRICT from which DEVELOPMENT RIGHTS are transferred, resulting in the permanent preservation of lands possessing significant conservation features.

SERVICE CLUB means an establishment to be used as a gathering place for a group of citizens organized for a non-profit purpose.

SETBACK means the area of a LOT measured from the LOT LINE to a BUILDING facade or elevation that is maintained clear of permanent STRUCTURES, with the exception of allowed encroachments for stairs or porches.

SHADOW FLICKER means the visible flicker effect when rotating blades of the WIND GENERATOR cast shadows on the ground and nearby STRUCTURES causing a repeating pattern of light and shadow.

SHOPFRONT means a private FRONTAGE conventional for retail use, with substantial glazing and an awning, wherein the facade is aligned close to the front property line with the BUILDING entrance at SIDEWALK grade.

SHOPPING CENTER means any BUILDING containing five (5) or more tenants and containing more than fifty thousand (50,000) Square feet of gross FLOOR AREA.

SIDEWALK means the paved section of the public FRONTAGE dedicated to pedestrian activity, café seating, and other STREET FURNITURE.

SIGN means any name, identification, description, display, illustration which is affixed to or painted or represented directly or indirectly upon a BUILDING, STRUCTURE or piece of land, in view of the general public, and which directs attention to an object, product, place, activity, person, institution, organization or business.

SIGN AREA means the entire area within a single continuous perimeter enclosing the extreme limits of the actual SIGN surface. It does not include any structural elements outside the limits of such perimeter which do not form an integral part of the display. For projecting or double-faced SIGNS, only one (1) display space shall be measured in computing total surface area where the SIGN faces are parallel or where the interior angle formed by the faces is ninety degrees (90°) or less.¹ For FREESTANDING SIGNS, SIGN AREA does not include any portion of the SIGN displaying the BUILDING address.

SITE DEVELOPMENT PLAN means professionally rendered drawings which delineate a proposed non-residential, multi-family or MANUFACTURED HOME development. Said plan shall include: property lines, location of BUILDINGS, means of ingress and egress, access to off-site parking and all provisions as outlined in this Chapter and Chapter 149, entitled Site Review, of the Code of the City of Dover.

SLOPE means the ratio of vertical distance to horizontal distance (rise divided by run), usually expressed in percent or degrees. SLOPE is measured over horizontal distances of twenty (20) feet or more, utilizing elevations at two-foot contours.

SQUARE means a CIVIC SPACE designed for unstructured recreation and civic purposes, spatially defined by BUILDING FRONTAGES and consisting of paths, lawns and trees.

SMALL WIND ENERGY SYSTEM means a wind energy conversion system consisting of a WIND GENERATOR, a TOWER, and associated control or

¹ See Figures 8 and 9 of the SIGN Diagrams, Part II, included at the end of this Chapter.

conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS means facilities that are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated EARTH materials.

STOOP means a private FRONTAGE wherein the facade is aligned close to the front property line with the first story elevated from the SIDEWALK for privacy, with an exterior stair and landing at the entrance.

STREET means a city thoroughfare for vehicle access.

STREET FURNITURE means benches and other STRUCTUREs incorporated into the STREETSCAPE for use by pedestrians.

STREET LIGHTS means pedestrian scale lighting incorporated into the STREETSCAPE and in parking facilities to promote safe travel during evening hours.

STREET TREES means canopy trees used to reinforce the area along vehicular STREETs where pedestrian activities are encouraged.

STREET WALLS means a freestanding wall built along the front property line. It may mask a parking LOT from the STREET, provide privacy to a SIDE YARD, and/or strengthen the spatial definition of the public realm.

STREETSCAPE means the physical elements along a STREET including trees, benches, waste bins, and bike racks.

STRUCTURE means a framework of support.

SUSPENSION means the ordered cessation of that portion of an extraction operation that is in violation of this Article until such time as the owner or operator can demonstrate compliance to the Zoning Administrator.

SYSTEM HEIGHT means the vertical distance from ground level to the tip of the WIND GENERATOR blade when it is at its highest point.

TELECOMMUNICATIONS FACILITIES means any STRUCTURE, ANTENNA, TOWER, or other device which provides licensed commercial mobile wireless services, cellular telephone services, specialized mobile radio

communications (SMR), enhanced specialized mobile radio communications (ESMR), personal communications service (PCS), paging, and similar services marketed to the general public.

TEMPORARY SIGN means a SIGN(s) customarily located on a trailer or similar wheeled apparatus, whether self-propelled or pulled by another vehicle, which is not permanently affixed to the ground. A-frame, sandwich board, inflatable, and other SIGNS not permanently affixed, directly or indirectly, upon a BUILDING, STRUCTURE, or land and not otherwise referenced under the definitions of "FREESTANDING SIGN," "PROJECTING SIGN" or "WALL SIGN", shall also be considered as "TEMPORARY SIGNS".

TERRACE/LIGHTWELL means a private FRONTAGE set back from the front property line by an elevated terrace or sunken lightwell which is permitted to encroach beyond the BUILD TO LINES.

TOURIST HOME - [Repealed on 08-01-90 by Ord. No. 8-90.]

TOWER means any STRUCTURE that is designed and constructed primarily for the purpose of supporting one or more ANTENNAS, including self-supporting lattice TOWERS, guy TOWERS, or monopole TOWERS. The terms also includes commercial radio and television transmission TOWERS, microwave TOWERS, common carriers TOWERS, cellular telephone TOWERS, ALTERNATIVE TOWER STRUCTURES, and similar STRUCTURES.

TOWER means the monopole, guyed monopole or lattice STRUCTURE that supports a WIND GENERATOR.

TOWER HEIGHT means the HEIGHT above grade of the fixed portion of the TOWER, excluding the WIND GENERATOR.

TRANSFER OF DEVELOPMENT RIGHTS (TDR) means the conveyance of the DEVELOPMENT RIGHTS of a parcel of land by deed or other legal instrument approved by the PLANNING BOARD to the developer of another parcel. Said legal instrument shall be recorded at the Strafford County Registry of Deeds.

TDR DISTRICT means an area defined as a zoning overlay district, which includes a SENDING AREA and a RECEIVING AREA for the purpose of transferring DEVELOPMENT RIGHTS from a parcel within the SENDING AREA to a parcel within the RECEIVING AREA.

Unsuitable development area means the area of a site that includes wetlands, water bodies, slopes exceeding a grade of 20% and totaling more than 2,000 square feet of contiguous area, land used for septic systems, floodways, and floodway fringe within the 100-year FLOODPLAIN as shown on the latest FEMA maps accepted by the City, and public utility easements.

USED CAR LOT means an unenclosed space on which three (3) or more used cars are stored or offered for sale.

VEHICLE REFUELING /RECHARGING STATION means an establishment, the principle use of which is to provide for the sale of gasoline fuel (including but not limited to gasoline, diesel, natural gas, electricity or hydrogen) and oil to individual vehicles and retail sale of products required for motor vehicle maintenance such as oil, transmission fluid, brake fluid, polish, wax, fuel additives and treatments, wipers, tires, batteries, windshield wiper fluid, cleaning fluids and similar items. The retail sale of propane and kerosene is also allowed. The retail sale of over-the-counter retail consumer merchandise and DRIVE-THRU SERVICE may also be allowed.

WALL SIGN means a SIGN attached to or erected against the wall of a BUILDING, with the face in a parallel plane to the plane of the BUILDING wall, and projecting no more than fourteen (14) inches from the BUILDING wall.²

WAREHOUSING means only includes the activity of storing wares or goods by the occupant in his own behalf or for the benefit of others.

WATER DEPENDENT means those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore, cannot be located inland.

WATER RELATED EDUCATIONAL/RESOURCE CENTER means a facility devoted to the provision of educational resources and materials and/or displays. Such a facility may include but not be limited to a museum, aquarium, and aquaculture facility.

WATERBORNE PASSENGER TRANSPORTATION FACILITY means a facility designed for storing, servicing, fueling, berthing, securing and launching of excursion boats and water shuttles for the purpose of transporting passengers.

WETLAND EVALUATION HANDBOOK FOR DOVER means the manual used to conduct a functional evaluation of the wetland in order to obtain a

² See Figure 10 of the SIGN Diagrams, Part II, included at the end of this Chapter.

conditional use permit as required by the Wetland Protection District Ordinance.³ This handbook shall be adopted and amended, as required, by the PLANNING BOARD after a public hearing. Notice for said public hearing shall be published in a newspaper of general circulation and posted in three (3) places at least fifteen (15) days prior to the hearing.

WHOLESALE means only includes the activity of storage, repacking, sale and/or distribution of commodities in BULK quantities to jobbers, retailers, processors and manufacturers and shall not allow the sale and/or distribution of commodities to consumers on a retail basis.

WIND GENERATOR means the blades and associated mechanical and electrical conversion components mounted on top of the TOWER whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

YARD, FRONT means an open unoccupied space on a LOT between the STREET line and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

YARD, REAR means an open unoccupied space on a LOT between the REAR LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

YARD, SIDE means an open unoccupied space on a LOT between the side LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

ZONING BOARD OF ADJUSTMENT means the ZONING BOARD OF ADJUSTMENT of the City of Dover, as provided in the RSA 673:3.

ARTICLE III

DISTRICTS AND DISTRICT BOUNDARIES

170-7. Establishment of Districts. [Amended on 3-30-83 by Ord. No. 5-83; Amended on 4-27-83 by Ord. No. 12-83; Amended on 10-26-88 by Ord. No. 18-88; Amended on 04-03-91 by Ord. No. 01-91; Amended on 09-16-92 by Ord. No. 23-92; Amended on 11-22-95 by Ord. No. 19-95; Amended on 10-18-2006 by Ord. 03-2006; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 08-22-2018 by Ord. No.

³ See 170-27.1, Wetland Protection District, of this Chapter.

2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006 Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

A. Districts. The City of Dover is hereby divided into the following districts:

(1) Residential.

HR Heritage Residential District

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- R-40 Rural Residential District
- R-20 Low-Density Residential District
- R-12 Medium-Density Residential District
- RM-SU Suburban Density Multi-residential District
- RM-U Urban Density Multi-residential District

(2) Nonresidential.

- C Commercial District
- CM Commercial Manufacturing
- IT Innovative Technology

(3) Mixed-use.

- G Gateway
- H Hospital
- LBW Little Bay Waterfront District
- O Office District
- CBD Central Business District
- CWD Cochecho Waterfront District

(4) Overriding.

- CD Conservation District
- URD Urban Renewal District
- RRD Riverfront Residential Overlay District
- GWP Groundwater Protection District
- HWD Hazardous Waste Landfill District
- RCM Residential-Commercial Mixed-Use
- SRD Scenic Road Overlay District
- TDR Transfer of Development Rights
- TEL Telecommunications Facilities
- WPD Wetland Protection District

B. District purpose statements.

- (1) Residential districts. The residential districts are intended to provide a wide range of residential units to provide the citizens of Dover with a balance of housing choices, with varying housing types, densities and costs. The goal is to preserve and create City neighborhoods that are safe and promote harmonious development.
 - (a) Rural Residential District (R-40). The purpose of this residential district is to provide for conventional single-family neighborhoods in the more rural areas of the City. These areas have larger lot sizes (one or more acres) and the homes are most likely served by on-site septic systems and wells, but there are some portions of the district that have municipal sewer and water. New subdivisions are designed as open space developments with reduced lot sizes allowed in return for the permanent preservation of open space. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with

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single-family homes are permitted, including churches, hospitals, elementary schools, high schools and child-care facilities.

- (b) **Low-Density Residential District (R-20).** The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 20,000 square feet. The homes in this district are likely served by municipal sewer and water, but there are some areas that still have on-site septic systems and wells. These districts are located near major roadways. The development of parcels with at least 15 acres can be done as open space subdivisions. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools and child-care facilities.
- (c) **Medium-Density Residential District (R-12).** The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 12,000 square feet. The homes in this district are almost all served by municipal sewer and water. Many of the neighborhoods surrounding the elementary schools are in this district and have a sidewalk system that is conducive to children walking to school. The development of parcels with at least five acres can be done as open space subdivisions. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools, colleges and child-care facilities.
- (d) **Suburban Density Multi-Residential District (RM-SU)** The purpose of this residential district is to provide an environment suitable for a variety of moderate-density housing types, including single-family, two-family, three- to four-family and multifamily dwellings. These districts are suburban neighborhoods located along major roadways outside of the center of the City. The homes in this district are almost all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, elementary schools, high schools, and child-care facilities.
- (e) **Urban Density Multi-Residential District (RM-U).** The purpose of this residential district is to provide an environment suitable for a variety of moderate/high-density housing types, including single-family, two-family, and three- to four-family dwellings. These districts are urban neighborhoods located close to the downtown area and contain many historic homes that are built close to the sidewalks and streets. The homes in this district are all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, funeral parlors, elementary schools, high schools, and child-care facilities.
- (f) **Heritage Residential District (HR).**
 - (a) These primarily residential neighborhoods surrounding the Silver Street area exhibit a rare collection of interesting architecture. While primarily Victorian and characterized by wide porches, bay windows, steep roofs, and intricate and involved woodwork, there are noteworthy Colonial buildings as well. In both instances, their original occupants were likely community leaders, whether early tavern keepers, or later senior managers and foremen from the mill facilities that lined the Cochecho River, as well as other community professionals.

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- (b) The common theme through all of these designs is both the massing and the placement of these structures in a manner that is compatible with what had gone before. It is the intent that in this district, new construction, replacement construction, and new additions should continue that tradition of compatibility with the existing neighborhood.
- E. Nonresidential districts. The nonresidential districts are intended to provide suitable areas for commercial, service, retail, office and industrial developments, to provide employment opportunities for citizens of Dover and the region, to enhance property values, and expand the tax base. Development that uses land efficiently and has high quality design is encouraged.
 - (1) Commercial District (C). The purpose of this business district is to provide an environment that encourages efficient and attractive automobile-oriented commercial development along major highways outside of the downtown. The minimum lot size of 20,000 square feet encourages moderately sized commercial uses. The district provides economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, automobile sales, hotels, offices, banks, and theaters. Other commercial uses and multifamily dwellings are allowed by special exception.
 - (2) Commercial/Manufacturing District (CM). The purpose of this industrial district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, storage, warehousing, wholesaling and shipping activities that expand the economic base of the City and provide employment opportunities. This area is the location of one of the first industrial parks in the City, located off Littleworth Road and Knox Marsh Road in a more rural area. The smaller minimum lot size of 20,000 square feet also encourages business uses such as publishing, hotels, vehicle refueling/recharging stations, restaurants, car sales, offices, and personal services.
 - (3) Innovative Technology (IT). The purpose of this district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, laboratory, testing facility, warehousing, wholesaling, publishing and shipping activities that expand the economic base of the City and provide employment opportunities. These areas are located along major collector roads away from the downtown area. The newer business parks are located in this district. The minimum lot size in this district is two acres, which encourages larger assembling and manufacturing users.
- (3) Mixed-use districts. The mixed use districts are intended to provide suitable areas for a mixture of urban neighborhoods containing residential, commercial, service, retail, and office uses. The mixed-use development is intended to create a sense of community between the mixed uses and facilitate the economical and efficient use of land. The districts are intended to provide housing and employment opportunities for citizens of Dover and the region, to enhance property values, and expand the tax base. Development that uses land efficiently and has high- quality design is encouraged.
 - (a) Gateway (G). The purpose of this district is to mark a transition point where you move from the less developed area (the highway, the rural landscape, etc.) to a more formal, densely developed urban core (multi-story buildings, civic buildings, etc.). In Dover the primary Gateways (eg Central Avenue north and south of the downtown core, Broadway, and Portland Avenue) are

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generally dominated by commercial activity, with buildings of a lower height than those located downtown. Some residual residential activity occurs occasionally as stand-alone buildings, but frequently residential activity is located above ground floor commercial uses. A modest distance between the building and the street exists, with a fair amount of landscaping.

- (b) Hospital (H). The purpose of the Hospital District is to provide appropriate locations for hospitals and medical offices associated with a hospital. This district also encourages other health care services and various housing facilities providing levels of service for older persons. Single- and two- family residential uses are permitted along with commercial uses such as offices, banks, funeral parlors, assembly halls, and schools.
- (c) Little Bay Waterfront District (LBW). The purpose of this mixed-use district is to provide locations for a mixture of residential and commercial uses on the waterfront parcels along a portion of the shores of the Little Bay. The small minimum lot size encourages a mix of various-sized commercial uses, with water-related uses, such as marinas, specifically permitted. Single- and two-family homes are allowed in recognition of the historically residential use of the area. Three- or four-family dwellings are allowed only as part of a mixed-use building. Businesses that take advantage of the unique location along Little Bay are encouraged.
- (d) Office District (O). The purpose of this Office District is to provide appropriate locations for a mixture of residential and office uses along higher-volume streets. The remaining large historic homes are no longer suitable for single-family residential due to the high traffic. This district is a transition area between the more commercial areas and the urban residential areas on the side streets. Residential uses up to four dwelling units per structure are permitted, along with commercial uses such as offices, banks, funeral parlors, churches, schools, hospitals, nursing homes and congregate-care facilities. The density for residential uses is about eight units per acre, and in new buildings, residential is only allowed on the second floor or higher.
- (e) Central Business District (CBD). The purpose of this district is to provide the appropriate locations for context-sensitive zoning. The form-based code in this district is intended to foster a vital main street both for itself and for its adjacent neighborhoods through a lively mix of uses, with shop fronts, sidewalk cafes, and other commercial uses at street level, overlooked by canopy shade trees, upper story residences and offices. The district has an increased emphasis on the form and placement of structures and a decreased emphasis on the function(s) contained within them.
- (f) Cochecho Waterfront District (CWD). The purpose of this mixed use district is to provide appropriate locations for a mixture of residential and commercial uses on the waterfront parcels along the downtown portion of the Cochecho River. This district has very flexible dimensional requirements, with no minimum lot size, frontage or setback requirements and a density of 43 dwelling units per acre. Several water-related land uses are permitted in the district, including marinas, waterborne passenger transportation facilities and water-related education and resource centers. The architecture of the waterfront areas should encourage the development of

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marine-, history- or tourism-related land uses and activities, which take advantage of the unique characteristics of the waterfront as well as its central location and proximity to historic areas.

- (4) Overriding districts. The purpose of the overriding districts is to provide an additional layer of land use regulation or protection in certain sensitive areas of the City. The requirements of these overlay districts are in addition to the underlying zoning districts. Most of the districts are intended to protect environmentally sensitive areas. For specific purpose statements, review the text of each overriding district.”

170-8. Zoning Map. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-26-2014 by Ord. No. 2016.10.12-014]

- A. The location and boundaries of the Zoning Districts are hereby established as shown on a map entitled "Zoning Map of the City of Dover, New Hampshire"§, dated September 11, 2019, which accompanies and is hereby declared to be part of this Chapter.
- B. For the purposes of the delineation of the Central Business District (CBD) the location and boundaries of sub districts are hereby established as shown on a map entitled “REGULATING PLAN** for the CBD Zone” dated December 9, 2009, accompanies and is hereby declared to be part of this Chapter.

170-9. Amendments to Zoning Map.

Any change in the location of boundaries of a zoning district hereafter made through the amendment of this Chapter shall be noted on the Zoning Map.

170-10. Interpretation of District Boundaries.

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as a STREET, railroad, watercourse or other body of water shall be construed to be the center or middle thereof.

§ Said Zoning Map is on file in the office of the Planning and Community Development Department, where it may be examined during regular business hours.

** Editor's Note: Said REGULATING PLAN is on file in the office of the Planning and Community Development Department, where it may be examined during regular business hours.

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- B. Boundaries indicated as following approximately or parallel to a STREET, railroad, watercourse or other body of water, it shall be construed to be parallel thereto and at such distance there from as shown on the Zoning Map.
- C. Where a dimensioned boundary coincides within ten (10) feet or less with a LOT LINE, the boundary shall be construed to be the LOT LINE.
- D. Where a boundary is indicated as intersecting the centerline of a STREET, railroad, watercourse or other body of water, it shall be construed to intersect at right angles to said center line or, in the case of a curved center line, at right angles to the tangent of the curve at the point of intersection.
- E. Where a district boundary divides one (1) LOT and more than fifty percent (50%) of the area of such LOT lies in the less restricted district, the regulations prescribed by this Chapter for the less restricted district may apply to the remainder of said LOT up to a distance of not more than fifty (50) feet from the district boundary. In no case, however, shall such extension of the less restricted district be permitted closer than one hundred (100) feet to any STREET line in the more restricted district.

ARTICLE IV

USES; TABLES

170-11. Use Regulations. [Amended on 08-01-90 by Ord. No. 8-90; Amended on 12-09-2009 by Ord. No. 8-90; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

Except as herein provided, no BUILDING or land shall be used except for the purposes permitted in the district as described in this Article.

- A. Uses Permitted by Right. A use listed in the Tables of Use and Dimensional Regulations by District is permitted as a matter of right in the district in which it is listed, subject to the rules set forth in this Chapter and other sections of the Code of the City of Dover.
- B. Uses Permitted by Right, With Conditions Imposed. A use listed in the Tables of Use and Dimensional Regulations by District and denoted with a numerical reference number (footnote) indicates a use that is permitted by right only when in compliance with certain imposed conditions.
- C. Uses Permitted by Special Exception. A use listed in the Uses Permitted by Special Exception Section of the Tables of Use and Dimensional Regulations by District may be permitted as a Special Exception granted by the ZONING BOARD OF

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ADJUSTMENT in accordance with the conditions of 170-52 herein and in conformance with such other rules and regulations as may apply.

The Special Exception designation in a given district does not constitute an authorization of an assurance that such use will be permitted.

- D. Uses not permitted. A use not listed in the Tables of Use and Dimensional Regulations by District shall not be permitted in the district.
- E. PLANNING BOARD Site Review Approval. Any development/redevelopment meeting the criteria laid out in the Applicability section of the Site Review Regulations, of the City of Dover shall be subject to the rules and regulations contained said chapter.
- F. Overriding district regulations. All uses are subject to the regulations of the overriding districts as listed and defined in this Chapter. (Refer to Article VII.)

170-12. Applicability of Tables of Use and Dimensional Regulations by District. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]^{††}

- A. Uses permitted in those zoning districts identified in 170-7 shall be as set forth in the Tables of Use and Dimensional Regulations by District.
- B. The minimum regulations for LOT size, LOT FRONTAGE, BUILDING SETBACK standards for front, side and REAR YARDS, BUILDING HEIGHTS, and LOT COVERAGE shall be as specified in the Tables of Use and Dimensional Regulations by District.

ARTICLE V

DIMENSIONAL REGULATIONS

170-13. Availability of Utilities and Services. [Amended on 6- 10-87 by Ord. No. 13-87.]

In instances where municipal sewer and water facilities are not provided, no residential STRUCTURE shall be built on a LOT with less than thirty thousand (30,000) square feet in area. Where municipal water is available and sewer is not, the minimum LOT size shall be twenty thousand (20,000) square feet in area. In no instance, however, shall the above requirements be more permissive than those required by the New Hampshire Department of Environmental Services, Water Division or required elsewhere in this Chapter. Furthermore, the above requirement shall not be substituted for mandatory hookups required by other chapters of the Code of the City of Dover.

^{††} See district sheets for individual amendment dates.

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170-14. Nonconforming LOTS. [Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No. 8-90; Amended on 08-22-2018 by Ord. No. 2018.08.08-009.]

In any district, structures which are allowed by right, but not structures that are allowed by special exception, may be erected on any nonconforming lot of record even though such lot fails to meet the requirements for area width or frontage provided that:

- (1) The lot has been duly recorded at the Strafford County Registry of Deeds on or before the effective date of adoption of this Chapter.
- (2) Should the lot be less than five thousand (5,000) square feet and not have a minimum width of fifty (50) feet, it may be developed as long as the home constructed is no larger than one thousand (1,000) square feet in total living space.
- (3) If the lot has a land area of at least five thousand (5,000) square feet and a minimum width of fifty (50) feet, a home constructed may be larger than one thousand (1,001) square feet in total living space.
- (4) In either case, the following side yard restrictions shall apply:
 - a. A lot with a width of one hundred ten (110) feet or less and greater than seventy-five (75) feet, shall have a minimum side yard of ten (10) feet.
 - b. A lot with a width of less than seventy-five (75) feet shall have a minimum side yard of six (6) feet.

170-15. Recreation Space and Separation between Use Requirements. [Amended on 08-01-90 by Ord. No. 8-90, Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 08-22-2018 by Ord. No. 2018.08.08-009.]

- A. For each bedroom of a multifamily [greater than four (4) DWELLING UNITS] residential STRUCTURE, there shall be provided at least one hundred (100) square feet of usable recreation space. Half of this required recreation space shall be provided in such a manner so as to afford active recreational opportunities for children, to include such facilities as swings, sandboxes, slides, play areas, etc. The remainder of the required recreation space shall be provided in such a manner so as to afford passive recreational opportunities for adults, such as sitting areas, outdoor cooking facilities, walkways, etc. The active and passive recreational facilities may be combined or separated as appropriate to the site and to the anticipated occupancy needs of the development.
1. Efficiency apartments shall be counted on the basis of fifty (50) square feet per unit.
 2. A payment in lieu of providing recreation space on site, for an identified recreation area, may be agreed to by the Planning Board.

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- B. The minimum distance between any main BUILDING and any accessory BUILDING not structurally attached to such main BUILDING shall be not less than the HEIGHT of the REAR wall of the accessory BUILDING.
- C. No part of a yard or other recreation space required for any BUILDING for the purpose of complying with the provisions of this Chapter shall be included as part of a yard or other recreation space similarly required for another BUILDING.
- D. Non-Residential uses requiring site plan review shall be at least one hundred fifty (150) feet from all existing residential STRUCTURES, located within residential zones.
- E. A continuous and year round visual buffer of either vegetation or fencing shall separate non-residential STRUCTURES ~~and~~ or parking areas from existing residential STRUCTURES located to the rear and side of any proposal.
- F. All screening and setback requirements pursuant to this section shall not be binding in the IT or any Mixed Use Zoning District.
- G. All recreation space requirements pursuant to this section shall not be binding in the CBD – General, TOD and CWD districts.

170-16. Swimming Pools. [Amended 12-09-2009 by Ord. No. 2009.09.09-15, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

In Districts allowing one (1) Family Dwellings, two (2) Family Dwellings, and three to four (3 – 4) Family Dwellings, pools for swimming or bathing shall be in conformity with the following regulations:

- A. Every outdoor swimming pool shall be completely surrounded by a FENCE or wall not less than four (4) feet in HEIGHT, which shall be so constructed as not to have openings, holes or gaps larger than four (4) inches in any dimension, except for doors and gates, and if a FENCE is erected or maintained, the horizontal dimension shall not exceed four (4) inches. A primary dwelling or accessory BUILDING or STRUCTURE may be used as part of the enclosure.
- B. Gates. All gates or door openings through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gates or door securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.
- C. Applicability. The requirements of this Chapter shall be applicable to all new swimming pools hereafter constructed, other than indoor pools, and temporary wading pools less than twenty-two inches (22") deep or eight feet (8') in diameter (whichever is more restrictive) and shall apply to all existing pools which have a

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minimum depth of twenty-two (22) inches of water. No person in possession of land within the City, either as owner, purchaser, lessee, tenant or a licensee, upon which is situated a swimming pool having a minimum depth of twenty-two (22) inches shall fail to provide and maintain such FENCE or wall as herein provided.

- D. Appeals and hearings. The Board of Adjustment after public hearing, may make modifications in individual cases, upon a showing of good cause with respect to the HEIGHT, nature or location of the FENCE, wall, gates or latches or the necessity therefore, provided that the protection as sought hereunder is not reduced thereby. The Board of Adjustment may permit other protective devices or STRUCTUREs to be used so long as the degree of protection afforded by the substitute devices or STRUCTUREs is not less than the protection afforded by the wall, FENCE, gate and latch described herein.
- E. State requirements. Swimming pools shall conform to all requirements of the New Hampshire Department of Health and Human Services.
- F. Option to FENCE regulation. When not in attendance, access ladders or slide ladders to pool shall be removed or raised and locked or otherwise made inaccessible from the outside to small children.

170-17. Removal of Barriers to Access. [Amended on 08-14-93 by Ord. No. 17-93; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

Upon the discretion of the Building Inspector, with consultation of the Zoning Administrator, in all zoning districts a STRUCTURE constructed for the express purpose of improving and/or providing accessibility to an existing BUILDING for physically and/or mentally disabled individuals may be erected within the BUILDING SETBACKs (front, side and/or REAR) as specified in the Table of Dimension Regulations provided:

- A. The STRUCTURE cannot feasibly and practicably be constructed on the LOT in compliance with the Table of Dimensional Regulations;
- B. The STRUCTURE must not create a hazard or detrimental impact to surrounding properties.

ARTICLE VI

ADDITIONAL REGULATIONS

170-18. CUSTOMARY HOME OCCUPATIONS. [Amended on 11-28-2012 by Ord. No. 2012.11.14-24, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

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A CUSTOMARY HOME OCCUPATION is a permitted use in all Residential Districts. The following conditions apply:

- A. "Home occupation" shall include not more than one (1) of the following uses, provided that such uses are clearly incidental and secondary residential purposes; dressmaker, artist, arts and crafts, writer, teacher, provided that not more than eight (8) pupils simultaneously occupy the BUILDING, musician, antique dealer, hairdresser, HOME BASED AGRICULTURAL ACTIVITIES, lawyer, doctor, photographer, dentist, architect, engineer or practitioner of any other profession or similar occupation which may be unobtrusively pursued in a residential area.
- B. No more than one (1) nonresident shall be employed therein.
- C. The use is carried on strictly by the occupant of the PRINCIPAL BUILDING.
- D. No more than twenty-five percent (25%) of the existing net FLOOR AREA of the principal and any ACCESSORY STRUCTURE not to exceed six hundred (600) square feet is devoted to such use.
- E. There shall be no display of goods or wares visible from the STREET.
- F. No advertising on the premises other than a small no-illuminated SIGN not to exceed two (2) square feet in area and carrying only the occupant's name and his occupation.
- G. The BUILDINGS or premises occupied shall not be rendered objectionable or detrimental to the residential character of the NEIGHBORHOOD because of the exterior appearance, traffic emission of odor, gas, smoke, dust, noise, electrical disturbance, light emissions, or in any other way. In a MULTIFAMILY DWELLING, the use shall in no way become objectionable or detrimental to any residential use within the multifamily STRUCTURE.
 - a. No rallying of employees for offsite work shall be conducted.
 - b. If the home is occupied by a tradesman, craftsman or contractor, there may be incidental storage. Said storage shall be screened from abutters and the right of way, with either a solid fence or vegetation, and must be fully enclosed. Onsite storage of construction equipment or vehicles is not permitted.
- H. Any such BUILDING shall include no feature of design not customary in BUILDINGS for residential use. The following uses, by nature of the investment or operation, have a potential to rapidly increase beyond the limits specified above for home occupations and impair the use, value and quiet enjoyment of adjacent residential properties. Therefore, uses such as Retail, Clinic, Landscaping, Freight, Trucking or Shipping, Painting of Vehicles, Trailers and Boats, Restaurants, Caterers

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or Bakeries, Taxi Service, Tool or Equipment Rental, Veterinary hospital or KENNEL and others of a similar nature shall not be considered as home occupations.

- I. A minimum of two (2) OFF-STREET PARKING SPACES shall be provided. All driveways to be used in connection with such occupations shall conform to Chapter 153 Site Plan Review or Chapter 157 Land Subdivision Regulations, as appropriate.
- J. Not more than one (1) commercial vehicle in connection with such home occupation shall be stored on the premises.
- K. A certificate of use for the proposed home occupation is issued by the Zoning Administrator verifying conformance with the preceding standards. Said certificate shall be renewed annually. Applications to renew the certificate of use shall be due by January 1st following the date of approval of the certificate of use and then by every January 1st thereafter for so long as the CUSTOMARY HOME OCCUPATION continues. Fees shall be levied as set forth in the City of Dover Adopted Schedule of Fees, as amended annually, for CUSTOMARY HOME OCCUPATION certificates of use and renewals.
- L. The use of a ROOM in a dwelling or accessory BUILDING as a home office by a resident/occupant is a permitted use and does not require a certificate of use, provided that the use does not generate any traffic such as (i) deliveries or pickup of supplies or materials in excess of normal residential use, or (ii) clients coming to the property.

170-19. Reserved. [Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

170-20 Central Business District Regulations. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13; Amended on 06-22-2016 by Ord. No. 2016.06.08-010; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006, Amended on 07-22-2020 by Ord. No. 2020.07.08.007, Amended on 09-14-2022 by Ord. No. 2022.08.10.010.]

A. Purpose and Intent

- (1) The City of Dover Central Business District (CBD) follows the premises of context sensitive zoning. This context sensitive zoning is intended to foster a vital downtown both for itself and for its adjacent NEIGHBORHOODs and major roadways leading into the downtown through a lively mix of uses—with SHOPFRONTs, SIDEWALK cafes, and other commercial uses at STREET level, overlooked by canopy shade trees, upper story residences and OFFICEs.
- (2) Redevelopment within the CBD shall be regulated by these context sensitive zoning regulations, in order to achieve the City’s vision set forth in the 2007 update to the Land Use Chapter of the Master Plan, adopted by the PLANNING BOARD on November 13, 2007.

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- (3) These context sensitive zoning regulations were originally developed through a citizen-based discussion process regarding the design for the improvement of all properties in the CBD. To allow further refinement consistent with individual areas, the district has been divided into sub-districts, with special requirements for each sub-district to allow for context sensitive development along roadways and NEIGHBORHOODs alike. In 2012-2013, using a similar citizen-based process, these context sensitive zoning regulations were extended to the major roadways that lead into downtown, identified as the Downtown Gateway Sub-district.
- (4) All of the areas within the CBD share a common goal of increased emphasis on the form and placement of STRUCTUREs, and a decreased emphasis on the function(s) contained within them. As such this Article sets careful and clear controls on BUILDING form—with broader parameters on BUILDING use—so as to shape clear, attractive PUBLIC SPACEs (good STREETs, NEIGHBORHOODs and parks) with a healthy mix of uses. With proper urban form, a greater integration of BUILDING uses is natural and comfortable.
- (5) Wherever there appears to be a conflict between the form based code and other sections of the Zoning Ordinance (as applied to a particular development), the requirements specifically set forth in this section shall prevail. For development standards not covered herein, the other applicable sections in the City of Dover Code shall be used as the requirement.

B. Conditional Use Permit

- (1) Conditional use approval for relief from the standards herein may be granted by the PLANNING BOARD (RSA 674:21 II) after proper public notice and public hearing provided that the proposed project complies with the following standards:
 - (a) That both public and private BUILDINGs and landscaping shall contribute to the physical definition of RIGHTs OF WAY as CIVIC SPACEs.
 - (b) That development shall adequately accommodate automobiles, while respecting the pedestrian and the spatial form of public areas.
 - (c) That the design of STREETs and BUILDINGs shall reinforce safe environments, but not at the expense of accessibility.
 - (d) That architecture and landscape design shall grow from local climate, topography, history, and BUILDING practice.

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- (e) That BUILDINGs shall provide their inhabitants with a clear sense of geography and climate through energy efficient methods.
 - (f) That CIVIC BUILDINGs and public gathering places shall be provided as locations that reinforce community identity and activity.
 - (g) That CIVIC BUILDINGs shall be distinctive and appropriate to a role more important than the other BUILDINGs that constitute the fabric of the city.
 - (h) That the preservation and renewal of historic BUILDINGs shall be facilitated.
 - (i) That the harmonious and orderly evolution of urban areas shall be advanced by the proposed BUILDING and/or use.
- (2) Conditional use approval for relief from the use standards herein may be granted by the PLANNING BOARD (RSA 674:21 II) after proper public notice and public hearing provided that the proposed project complies with the following standards:
- (a) The requested use shall be compatible with abutting uses and the surrounding NEIGHBORHOOD.
 - (b) The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
 - (c) The requested use will not result in objectionable noise or odor which would constitute a NUISANCE.
- (3) Conditional use approval shall be subject to a formal agreement between the PLANNING BOARD and the APPLICANT. Said agreement shall be recorded at the Strafford County Registry of Deeds.

C. Sub-districts

- (1) The REGULATING PLAN for the CBD shall locate the boundaries for the following sub-districts:
 - (a) General
 - (b) Mixed Use

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- (c) Residential
- (d) Transit Oriented Development (TOD)

D. Standards and regulations

- (1) The standards for use and dimensions to be utilized within the CBD are shown on the tables at the end of the section. Included in each table are the following areas:
 - (a) District Purpose
 - (b) LOT Occupation Regulations
 - (c) Diagram of BUILDING HEIGHT
 - (d) Diagram of BUILD TO LINEs
 - (e) Special Regulations
 - (f) Permitted Uses
- (2) Through the issuance of a conditional use permit, BUILDING HEIGHT may be increased by one (1) story, which shall be setback from the allowed height to create a terrace, for either:
 - (a) Each fully below story of parking provided on the site; or.
 - (b) Additional units resulting from this CUP are restricted so that the rent of said units conforms to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority.
- (3) General Guiding Principles for BUILDING Placement
 - (a) The goal of the BUILDING HEIGHT and BUILD TO LINE standards is the creation of a healthy and vital public realm through good STREET space.
 - (b) BUILDINGs are aligned and close to the STREET.
 - (c) The STREET is a coherent space, with consistent BUILDING forms on both sides of the STREET, creating a clear PUBLIC SPACE and community identity.
 - (d) BUILDINGs oversee the STREET (and SQUARE) with active fronts contributing to a vital and safe PUBLIC SPACE.

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- (e) Property lines are physically defined by BUILDINGs or STREET WALLs.
- (f) BUILDINGs are designed for an urban feel and situation. Views are directed to the STREET and the garden/courtyard, not toward the neighbors. However within the STREET wall alcoves or small courtyards are permitted to allow for seating and public access
- (g) Vehicle storage, garbage and mechanical equipment are kept away from the STREET.
- (h) Within the General, and Mixed Use sub-districts, new non-residential activities must make up at least 20 percent of the structure or be located on the GROUND FLOOR.
 - 1. If retail and commercial activities are located on the GROUND FLOOR of BUILDINGs not fronting directly onto a STREET or municipal parking lot, the HEIGHT of the BUILDING may be increased by one (1) story.
 - i. Any additional stories shall be setback to create a terrace, and approved via a Conditional Use Permit.
- (i) In the TOD, residential may be located on the GROUND FLOOR, however new retail and commercial activities are encouraged to be developed.
- (j) Parking (not including on-street parking) should be away from the STREETs and shared by multiple owners/users.
- (k) Historic character should be preserved and enhanced by context sensitive construction.

E. STREETSCAPE

- (1) Sites within the CBD shall be developed so that BUILDINGs are placed at or near the RIGHT OF WAY, along the outer edge of their sites and so as to ensure the unity of those RIGHT OF WAYs. Furthermore, these standards establish an environment that encourages and facilitates pedestrian activity. The *Dover Streetscape Standards* will serve as a reference document for many of the elements below.
- (2) General Principles and Intent
 - (a) The STREETSCAPE

ZONING

- (i) The STREET and BUILDING façade receives more attention than the rest of the BUILDING.
- (ii) STREETSCAPE elements, such as pavers, benches and waste-bins must be consistent within a project and adjacent properties where these elements are present.
- (iii) PUBLIC ART is encouraged.
 - a. PUBLIC ART shall be reviewed and endorsed by the Dover Arts Commission
 - b. PUBLIC ART is a part of our public history and heritage, part of our evolving culture, reflects and reveals our society and adds meaning to our cities. PUBLIC ART should create a chronicle of our public experiences through a variety of genres and media.

(b) FRONTS AND REARS

- (i) BUILDING facades are the public "face" of every BUILDING. Owners are encouraged to place planters and window boxes with flowering plants and/or climbing vines along the area in front of their BUILDINGS.
- (ii) The private, REAR portions of the LOTs allow commercial operators to utilize these spaces as efficient working environments unseen by the public and allow residents to have private and semi-private (for apartment and condominium BUILDINGS) OPEN SPACE.

(c) OFF STREET PARKING

- (i) Parking provided for a project shall be screened from the STREET. The design of the screen shall be subject to PLANNING BOARD approval and shall use materials that are compatible with the surrounding character of the NEIGHBORHOOD and contribute to an attractive STREETSCAPE.
- (ii) Parking shall be considered accessory and shall not be the principal use of a LOT.

(3) Minimum Standards

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In addition to any regulations set forth in the CBD sub-district tables and the *Dover Streetscape Standards*, development shall follow the regulations outlined below.

Subsections (a), (b), and (c) shall only apply to new construction and/or renovations that will result in a 50% or more increase in the value of the property, as determined by a licensed New Hampshire appraiser.

(a) STREET TREES/Landscaping

- (i) Each STREET shall have canopy shade trees (STREET TREES). STREET TREES shall be planted at an average spacing not greater than twenty-five (25) to thirty (30) feet on center (measured per BLOCK FACE). The planting area's minimum dimension shall be not less than five (5) feet. At planting, trees shall be two and a half (2.5) to three (3) inches in diameter (four (4) feet above grade) and shall meet the *American Nursery Standards* for HEIGHT. The tree species used shall be selected from the City of Dover's approved list of STREET TREES.
- (ii) Unpaved ground area along the frontage shall be planted with appropriate groundcover or shrubs, no bare ground or mulch-only areas permitted. Low Impact Development techniques such as rain gardens, bioretention areas, tree boxes and other green infrastructure techniques shall be incorporated into these landscaped areas and maintained to ensure five foot (5') wide walkway.

(b) SIDEWALKS

- (i) SIDEWALKS shall be made of brick or concrete and shall be a minimum of five (5) feet wide, but ideally eight (8) feet wide.
- (ii) Existing surrounding sidewalk materials shall be reviewed in determining material used.

(c) STREET FURNITURE

- (i) Benches - Benches will have backs and arm rests and accessible. See sub-district tables for spacing requirements. Benches shall be oriented to encourage social interaction, and be designed to enhance the site, not detract from it.
 - a. Benches may be exchanged for street furniture (eg chess/checker tables) where space allows.

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- (ii) Waste Bins - At a minimum, one (1) waste bin will be provided at each BLOCK CORNER.
- (iii) Bike Racks – At a minimum, one (1) bike rack shall be required per non-residential project or residential projects with five (5) or more units.
- (iv) PUBLIC ART should be integrated into the design and placement of STREET FURNITURE

(d) Lighting

- (a) Materials and equipment chosen for lighting fixtures should be durable, energy efficient, and weather well. Appropriate lighting is desirable for nighttime visibility, crime deterrence, and decoration. However, lighting that is too bright or intense creates glare, hinders night vision, and creates light pollution.
- (iii) At the front of the BUILDING, exterior lights shall be mounted between six (6) feet and fourteen (14) feet above the adjacent grade.
- (iii) Floodlights or directional lights may be used to illuminate parking garages and working (maintenance) areas but must be shielded or aimed in such a way that they do not shine into other LOTs, or the STREET. Floodlighting shall not be used to illuminate BUILDING walls (i.e. no up-lighting), except in the TOD sub-district.
- (v) Site lighting shall be of a design and HEIGHT so as to illuminate only the LOT.
- (v) No flashing, traveling, animated, or intermittent lighting shall be visible from the STREET on the exterior of any BUILDING, whether such lighting is of temporary or long-term duration.

(e) Mechanical Equipment

- (i) The following shall not be stored or located within any STREET, and be screened from view from the STREET: Air compressors, mechanical pumps, exterior water heaters, water softeners, utility and telephone company transformers, meters or boxes, garbage cans, storage tanks, and the like may not be stored or located within any area considered a FRONT YARD under this Code.

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- (ii) Roof mounted equipment shall be screened from view from the STREET.

F. Architectural Standards

The following standards including those noted on sub-district sheets and may be utilized by the APPLICANT.

(1) General Principles and Intent

(a) Tradition

- (i) These standards favor BUILDINGS that are traditional in design in a broad sense. They specify an architectural language of load-bearing walls and regional materials that help define BUILDING base and cornice. These standards encourage details, such as column and pier spacing, window proportions, entry level, roof or cornice configurations, storefronts, and overhangs.
- (ii) The intent behind these standards is to reinforce the existing character and historic nature of Dover's central business district. However, modern BUILDINGS that are sensitive to that character and their adjacent context may be permitted as well
- (iii) All BUILDING materials to be used shall express their specific properties. For example, stronger and heavier materials (masonry) support lighter materials (wood).

(b) Energy Efficiency and Environmental Conservation

LEED (Leadership in Energy and Environmental Design) standards, or an equivalent standard (or such others as may succeed them), are encouraged to be incorporated into the BUILDING design.

(c) PUBLIC SPACE

Many of these standards apply only in conditions that enhance and define the PUBLIC SPACE. These controls concentrate on the PUBLIC SPACE/views from the PUBLIC SPACE and minimize interference in the private realm.

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(2) BUILDING Walls (Exterior)

- (a) BUILDING walls should reflect and complement the traditional materials and techniques of Dover's architecture. They should express the construction techniques and structural constraints of traditional, long-lasting, BUILDING materials. Simple configurations and solid craftsmanship are favored over complexity and ostentation in BUILDING form and the articulation of details. All BUILDING materials to be used shall express their specific properties. For example, heavier more permanent materials (masonry) support lighter materials (wood) yet architectural detail shall be present throughout the building face horizontally and/or vertically rather than just on the first twenty feet (20') from the ground.
- (b) BUILDING materials shall be context sensitive and shall reflect a consistency to be found within the sub-district.
 - (i) Brick, stone or masonry BUILDING materials are expected for exterior walls.

(3) Roofs and PARAPETS

- (a) Roofs and PARAPETS should demonstrate a commonsense recognition of the climate by utilizing appropriate pitch, drainage, and materials.
- (b) BUILDINGS without visible roof surfaces and overhanging eaves may have a cornice projecting horizontally between six (6) and twelve (12) inches beyond the BUILDING walls. For BUILDINGS three stories or taller, the cornice projection shall increase an additional six (6) and twelve (12) inches per STORY.
- (c) Skylights and roof vents are permitted only on the roof plane opposite the primary STREET or when shielded from the STREET view by the BUILDING's PARAPET wall. If a glass roof form is a primary design feature of a building it shall be considered in regard to the architectural design guidelines as part of the building elevations rather than a skylight.
- (d) Overly elaborate, "postmodern" and/or "high-tech" designs are discouraged, where in conflict with existing architecture. However, ornamentation which contributes to the character of the BUILDING is encouraged. BUILDING designs need to reflect the adjacent massing. Ornamentation should be consistent with that used in the NEIGHBORHOOD of BUILDINGS to reinforce the fabric and richness of the community.

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- (e) Green roof technologies are encouraged in all districts. Use of this technology to cover thirty percent (30%) of the roof is required on commercial and mixed-use structures over 25,000 square feet in the CBD. Vegetative cover should be considered for flat roofed STRUCTURES. Roofs that contain gardens or plants must be maintained per the approved maintenance agreement.
- (f) Solar panels are desirable citywide.
 - i. In the CBD all buildings must be solar ready.
 - ii. Commercial and mixed-use buildings that are 25,000 sq ft or more must incorporate solar panels.
 - iii. Solar panels must be presented in an aesthetically pleasing pattern.
- (g)

(4) STREET WALLS

- (a) STREET WALLS establish a clear edge to the STREET in locations where the BUILDINGS do not. The CBD requirements include masonry walls that define outdoor spaces and separate the STREET from the private realm (parking LOTS, trash cans, gardens, and equipment). All STREET WALL façades shall be as carefully designed as the BUILDING façade, with the finished side out, i.e. the “better” side facing the STREET.

(5) Windows and Doors

- (a) Windows should be divided by multiple, vertical panes of glass. This helps the window “hold” the surface of the façade, rather than appearing like a “hole” in the wall (an effect produced by a large single, horizontal sheet of glass).
- (b) PRINCIPAL BUILDING entrances shall be clearly visible from the primary front STREET and create a safe and inviting space.

G. Incentives for Architectural Standards

- (1) Any plan that demonstrates reasonable use of the optional architectural standards defined in Section F, may apply for the following incentive:
 - (a) Fast track review

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The Director of Planning and Community Development shall give preference to projects in setting the PLANNING BOARD agendas and in other review processes.

- (2) Reasonable use shall be considered demonstration of at least six (6) of the criteria or items mentioned under Section F. These criteria/items will be listed on a waiver application form.

H. Administration

- (1) Deviations from the requirements herein may be requested by application to the PLANNING BOARD for a conditional use permit (see Section B).
Administrative appeals from this Section may be directed to the ZONING BOARD OF ADJUSTMENT (as outlined in 170 – 52). Projects submitted shall follow the process outlined with Chapter 149, Site Review Regulations.

Any redevelopment of an existing STRUCTURE within the CBD Downtown Gateway or Mixed Use sub-districts does not require a Conditional Use Permit if it results in three (3) or fewer total residential units, or if it increases the gross floor area of nonresidential space by less than two thousand five hundred (2,500) square feet, and is exempt from the regulations of this Section, except for SETBACK, BUILD TO, and use regulations. Density requirements for residential uses do not apply.

- (2) Any redevelopment within the CBD is exempt from Wetlands Regulations as described and administered in this Chapter.

170-21. ALTERNATIVE ENERGY SYSTEM. [Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24, Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

A. Authority/Purpose:

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

B. Procedure for Review:

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- (1) Building Permit: ALTERNATIVE ENERGY SYSTEMs and met TOWERs are an ACCESSORY USE permitted in all zoning districts where STRUCTUREs of any sort are allowed. No ALTERNATIVE ENERGY SYSTEM shall be erected, constructed, or installed without first receiving a BUILDING permit from the Building Inspector. A BUILDING permit shall be required for any physical MODIFICATION to an existing ALTERNATIVE ENERGY SYSTEM. Met TOWERs that receive a BUILDING permit shall be permitted on a temporary basis not to exceed three (3) years from the date the BUILDING permit was issued.
- (2) Consumer Use. For the purposes of this Section, Alternative energy systems are intended to be incidental and subordinate to a use on the same parcel and shall supply electrical power principally for on-site consumption.
 - a. To the extent net metering is allowed, excess power may be contributed to the grid. Should the excess power contributed exceed 125% of the power required on site for one year, the use shall be considered no longer be incidental and subordinate, and shall require Technical Review.
- (3) Application: Applications submitted to the Building Inspector shall contain a site plan with the following information:
 - (a) Property lines and physical dimensions of the APPLICANT's property.
 - (b) Location, dimensions, and types of existing major STRUCTUREs on the property.
 - (c) Location of the proposed ALTERNATIVE ENERGY SYSTEM, foundations, guy anchors and associated equipment.
 - (d) TOWER foundation blueprints or drawings.
 - (e) TOWER blueprints or drawings.
 - (f) SETBACK requirements as outlined in this ordinance.
 - (g) The RIGHT-OF-WAY of any public road that is CONTIGUOUS with the property.
 - (h) Any overhead utility lines.
 - (i) SMALL WIND ENERGY SYSTEM
 - i. Specifications, including manufacturer, model, rotor diameter, TOWER HEIGHT, TOWER type, nameplate generation capacity.

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- ii. SMALL WIND ENERGY SYSTEMS that will be connected to the POWER GRID shall include a copy of the application for interconnection with their electric utility provider.
- iii. Sound level analysis prepared by the WIND GENERATOR manufacturer or qualified engineer.
- iv. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
- v. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.

(j) Solar Panel Systems

- i. Specifications, including manufacturer, model, type, nameplate generation capacity.
- ii. Solar Panels that will be connected to the POWER GRID shall include a copy of the application for interconnection with their electric utility provider.
- iii. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code, as well as applicable Electric Code.

(k) List of ABUTTERS to the APPLICANT's property.

- (4) ABUTTER and Regional Notification: In accordance with RSA 674:66, the Building Inspector shall notify all ABUTTERS and the local governing body by Verified Mail upon application for a BUILDING permit to construct a ALTERNATIVE ENERGY SYSTEM. The public will be afforded 30 days to submit comments to the Building Inspector prior to the issuance of the BUILDING permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.

C. Small Wind Energy Systems Standards:

- (1) The Building Inspector shall evaluate the application for compliance with the following standards;
- (a) SETBACK: The SETBACK shall be calculated by multiplying the minimum SETBACK requirement number by the SYSTEM HEIGHT and measured

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from the center of the TOWER base to property line, public roads, or nearest point on the foundation of an occupied BUILDING.

Minimum SETBACK Requirements			
Occupied BUILDINGs on Participating Landowner Property	Occupied BUILDINGs on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- (i) SMALL WIND ENERGY SYSTEMs must meet all SETBACKs for principal STRUCTUREs for the zoning district in which the system is located.
- (ii) Guy wires used to support the TOWER are exempt from the SMALL WIND ENERGY SYSTEM SETBACK requirements.
- (b) TOWER: The maximum TOWER HEIGHT shall be restricted to thirty five (35) feet above the tree canopy within three hundred (300) feet of the SMALL WIND ENERGY SYSTEM. In no situation shall the TOWER HEIGHT exceed one hundred fifty (150) feet.
- (c) Sound Level: The SMALL WIND ENERGY SYSTEM shall not exceed sixty (60) decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- (d) SHADOW FLICKER: SMALL WIND ENERGY SYSTEMs shall be sited in a manner that does not result in significant SHADOW FLICKER impacts. Significant SHADOW FLICKER is defined as more than thirty (30) hours per year on abutting occupied BUILDINGs. The APPLICANT has the burden of proving that the SHADOW FLICKER will not have significant adverse impact on neighboring or adjacent uses. Potential SHADOW FLICKER will be addressed either through siting or mitigation measures.
- (e) SIGNS: All SIGNS including flags streamers and decorative items, both temporary and permanent, are prohibited on the SMALL WIND ENERGY SYSTEM, except for manufacturer identification or appropriate warning SIGNS.

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- (f) Code Compliance: The SMALL WIND ENERGY SYSTEM shall comply with all applicable sections of the New Hampshire State BUILDING Code.
- (g) Aviation: The SMALL WIND ENERGY SYSTEM shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- (h) Visual Impacts: It is inherent that SMALL WIND ENERGY SYSTEMS may pose some visual impacts due to the TOWER HEIGHT needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
 - (i) The APPLICANT shall demonstrate through project site planning and proposed mitigation that the SMALL WIND ENERGY SYSTEM's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, WIND GENERATOR design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
 - (ii) The color of the SMALL WIND ENERGY SYSTEM shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
 - (iii) A SMALL WIND ENERGY SYSTEM shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the APPLICANT shall provide a copy of the FAA determination to establish the required markings and/or lights for the SMALL WIND ENERGY SYSTEM.
- (i) Approved WIND GENERATORS: The manufacturer and model of the WIND GENERATOR to be used in the proposed SMALL WIND ENERGY SYSTEM must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- (j) Utility Connection: If the proposed SMALL WIND ENERGY SYSTEM is to be connected to the POWER GRID through NET METERING, it shall adhere to RSA 362-A:9.

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- (k) Access: The TOWER shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum HEIGHT of eight (8) feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- (l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the SMALL WIND ENERGY SYSTEM and as otherwise prescribed by applicable laws, regulations, and ordinances.

D. Solar Panel Standards

- a. Lot Coverage: solar systems do not constitute an increase to lot coverage unless the panel(s)/collector(s) and supporting structures constitute a building.
- b. Placement of solar systems:
 - i. The height of a roof mounted solar panel shall not be counted towards the maximum permitted height of the structure it is affixed to the zoning district.
 - ii. Ground-mounted solar panels, shall not be located in the front yard and shall meet or exceed required side and rear yard setbacks for accessory buildings.
 - iii. In no case shall a ground mounted unit exceed 20 feet in height.
 - iv. When solar storage batteries are included as part of the solar energy system, they must be housed in a secure space or enclosure meeting the requirements of the City's building and electrical codes when in use and, when no longer used, shall be disposed of in accordance with all applicable City, state and federal laws and regulations.

E. Abandonment:

- (1) At such time that a SMALL WIND ENERGY SYSTEM is scheduled to be abandoned or discontinued, the APPLICANT will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- (2) Upon abandonment or discontinuation of use, the owner shall physically remove the SMALL WIND ENERGY SYSTEM within ninety (90) days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to:

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- (a) Removal of the WIND GENERATOR and TOWER and related above-grade STRUCTURES.
 - (b) Restoration of the location of the SMALL WIND ENERGY SYSTEM to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- (3) In the event that an APPLICANT fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous twelve (12) month period. After the twelve (12) months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the SMALL WIND ENERGY SYSTEM. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. After review of the information provided by the owner, the Building Inspector shall determine if the SMALL WIND ENERGY SYSTEM has been abandoned. If it is determined that the SMALL WIND ENERGY SYSTEM has not been abandoned, the Building Inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- (4) If the owner fails to respond to the Notice of Abandonment or if, after review by the Building Inspector, it is determined that the SMALL WIND ENERGY SYSTEM has been abandoned or discontinued, the owner of the SMALL WIND ENERGY SYSTEM shall remove the WIND GENERATOR and TOWER at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the SMALL WIND ENERGY SYSTEM after the Notice of Abandonment procedure, the Building Inspector may pursue legal action to have the SMALL WIND ENERGY SYSTEM removed at the owner's expense.

F. Violation:

It is unlawful for any person to construct, install, or operate a SMALL WIND ENERGY SYSTEM that is not in compliance with this ordinance. SMALL WIND ENERGY SYSTEMS installed prior to the adoption of this ordinance are exempt from this ordinance except when MODIFICATIONS are proposed to the SMALL WIND ENERGY SYSTEM.

G. Penalties:

Any person who fails to comply with any provision of this ordinance or a BUILDING permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by RSA 676:17.

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170-22. Telecommunication Facilities. [Amended on 03-18-98 by Ord. No. 02-98; Amended on 10-20-99 by Ord. No. 13-99; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 11-28-2012 by Ord. No. 2012.11.14-24 , Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

- A. Authority. By the authority granted under RSA 674:16 and 674:21 and procedurally under the guidance of 675:1, II, this section creates an ordinance establishing a telecommunications program and amending the zoning code to add regulations pertaining to wireless communications facilities.
- B. Purpose and Intent. This ordinance is enacted in order to establish general guidelines for the siting of telecommunication TOWERS and ANTENNAS and to enhance and fulfill the following goals:
- (1) Preserve the authority of the City to regulate and to provide for reasonable opportunities for the siting of TELECOMMUNICATIONS FACILITIES while ensuring that telecommunications providers service remains effective and efficient.
 - (2) Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to, impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.
 - (3) Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future location availability, innovative siting techniques, and siting possibilities beyond the geographic boundaries of the City.
 - (4) Permit the construction of new TOWERS only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of TOWERS and ANTENNAS to configure them in a manner that minimizes visual impacts of said STRUCTURES.
 - (5) Require ANTENNA co-location on existing TOWER STRUCTURES through cooperation and agreements between providers.
 - (6) Provide for documentation of scheduling of recurring maintenance and safety inspections for all TELECOMMUNICATIONS FACILITIES and appurtenances.
 - (7) Provide for the demolition and removal of abandoned facilities. Provide a procedure for the City to remove abandoned TOWERS to provide for the health and safety of citizens.

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(8) Provide for the removal or upgrade of technologically outmoded facilities.

C. Location. TELECOMMUNICATIONS FACILITIES shall be allowed in accordance with the following:

(1) On parcels situated in the City of Dover known as:

<u>General Location</u>	<u>Map-LOT Number</u>
Finch Lane	K-35A
Middle Road	M-57
Blackwater Road	A-29
	A-1
Parsons Lane	A-36
Venture Drive	D-7
	D-5A
Glen Hill Road	C-2012
	C-7
	C-8
	C-20
	C-19
	C-22
Tolend Road	C-27
French Cross Road	F-14

(2) In other areas within the City of Dover only as a co-location on existing TOWERs, ANTENNAs, and ALTERNATIVE TOWER STRUCTUREs.

D. TELECOMMUNICATIONS FACILITIES Procedural Requirements.

(1) Location or replacement of TELECOMMUNICATIONS FACILITIES on existing TOWERs, ANTENNAs or ALTERNATIVE TOWER STRUCTUREs.

(a) The location or replacement of TELECOMMUNICATIONS FACILITIES on existing TOWERs, ANTENNAs or ALTERNATIVE TOWER STRUCTUREs may be approved by the Planning and Community Development Department provided the following information is submitted in an application:

- (1) A scaled plan detailing exact size and location of the telecommunication device including a scaled elevation view.
- (2) Submission of proof that the telecommunication device is needed to service City of Dover residents.
- (3) Proof that the device meets all other technical requirements of this ordinance.

(b) Any application denied by the Planning and Community Development Department may be appealed to the PLANNING BOARD.

(2) Proposed construction of New TELECOMMUNICATIONS FACILITIES.

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An application for construction of any new TELECOMMUNICATIONS FACILITIES shall be approved by the PLANNING BOARD. Public hearing requirements as outlined in the Site Review Regulations shall apply. The following application requirements shall be provided:

- (a) A scaled plan in accordance with Site Review Regulations shall be submitted including the following additional information; a scaled elevation view, topography, radio frequency coverage, TOWER HEIGHT requirements, SETBACKS, drives, parking, fencing, landscaping, adjacent land uses (up to two hundred (200) feet away), and any other information deemed necessary by the Director of Planning and Community Development.
- (b) Written proof that the proposed use/facility complies with FCC regulations on radio frequency (RFD) exposure guidelines, and FAA regulations on TOWER lighting requirements.
- (c) The APPLICANT shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEAP) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (IS) is required under the FCC rules and NEAP, submission of the EA or IS to the PLANNING BOARD prior to the beginning of the federal thirty (30) day comment period, and the City's site review process, shall become part of the application requirements.
- (d) Each APPLICANT for an ANTENNA and/or TOWER shall provide to the PLANNING BOARD an inventory of its existing TOWERS that are within the jurisdiction of the City and those within two (2) miles of the border thereof, including specific information about the location, HEIGHT, design of each TOWER, as well as economic and technological feasibility for co-location on the inventoried TOWERS. The PLANNING BOARD may share such information with other APPLICANTS applying for approvals or special exception permits under this ordinance or other organizations seeking to locate ANTENNAS within the jurisdiction of the governing authority, provided, however that the PLANNING BOARD is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

The APPLICANT shall submit written evidence demonstrating that no existing STRUCTURE can accommodate the APPLICANT's proposed ANTENNA. This evidence shall consist of one or more of the following:

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- (i) Adequate evidence that no existing TOWERs or STRUCTUREs are located within the geographic area required to meet the APPLICANT's engineering requirements, provided that a description of the geographic area required is also submitted.
 - (ii) Adequate evidence that existing TOWERs are not of sufficient HEIGHT to meet the APPLICANT's engineering requirements, and why.
 - (iii) Adequate evidence that the existing TOWERs or STRUCTUREs do not have sufficient structural strength to support APPLICANT's proposed ANTENNA and related equipment.
 - (iv) Adequate evidence that APPLICANT's proposed ANTENNA would cause electromagnetic interference with the ANTENNA on the existing TOWERs or STRUCTUREs, or the ANTENNA on the existing TOWERs or STRUCTUREs would cause interference with the APPLICANT's proposed ANTENNA.
 - (v) Adequate evidence that fees, costs, or contractual provisions required by the owner in order to share the existing TOWER or STRUCTURE are unreasonable. Costs exceeding new TOWER development are presumed to be unreasonable.
 - (vi) Adequate evidence that the APPLICANT can demonstrate other limiting factors that render existing TOWERs and STRUCTUREs unsuitable.
- (e) The APPLICANT proposing to build a new TOWER shall submit an agreement with the City that allows for the maximum allowance of co-location upon the new STRUCTURE. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the APPLICANT to supply available co-location for reasonable fees and costs to other telecommunication providers. All agreements shall outline a procedure requiring all disputes on terms and conditions of co-location be submitted to a recognized commercial arbitration board for their review. The arbitration board's decision shall become final and binding. Failure to provide such an agreement is evidence of the APPLICANT's unwillingness to cooperate with the orderly and well-planned development of the (City), and grounds for a Denial.
- (f) The APPLICANT shall submit the engineering information detailing the size and coverage required for the facility location. The PLANNING BOARD may have this information reviewed by a consultant for verification of any claims made by the APPLICANT regarding technological limitations and feasibility

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for Alternative locations. Cost for this review shall be borne by the APPLICANT in accordance with RSA 676:4(g).

- (g) Each APPLICANT for a TOWER, monopole, or Alternative STRUCTURE shall submit a design certified by a competent engineer that the STRUCTURE has been engineered to accommodate the maximum number and type of all compatible telecommunication media ANTENNAE, but in no event shall the APPLICANT provide fewer than three additional co-locations from three additional providers. This provision may be modified based on visual or aesthetic impacts.

E. Performance Standards.

The uses listed in this section are deemed to be permitted uses, and at the discretion of the PLANNING BOARD, may require further review under this Chapter in accordance with Chapter 149, Site Review Regulations, and all other applicable ordinances and regulations of the City of Dover.

(1) Principal or Secondary Use.

- (a) Subject to this ordinance, an APPLICANT who obtains site review approval to site under this ordinance as a secondary and permitted use, may construct TELECOMMUNICATIONS FACILITIES in addition to the existing principal use. ANTENNAS and TOWERS may be considered either principal or secondary uses. A different existing use or an existing STRUCTURE shall not preclude the installation of an ANTENNA or TOWER on such LOT.
- (b) For purposes of determining whether siting of an ANTENNA or TOWER complies with zoning district development regulations, including, but not limited to area, SETBACK, LOT COVERAGE, FRONTAGE, and other dimensional requirements, the dimensions of the entire LOT shall control, even though the ANTENNAS or TOWERS may be located on leased parcels within such LOTS. TOWERS that are constructed, and ANTENNAS that are installed in accordance with the provisions of this ordinance, shall not be deemed the expansion of a non-conforming use or STRUCTURE. Further, said facilities shall not be considered an ACCESSORY USE.

(2) HEIGHT Requirements.

- (a) New TOWER Construction – one hundred eighty (180) feet maximum.
- (b) Co-location on Existing TOWER and ANTENNAS – current HEIGHT plus fifteen percent (15%) (not to exceed two hundred (200) feet)
- (c) Co-location on ALTERNATIVE TOWER STRUCTURES – current HEIGHT plus twelve (12) feet
- (d) The HEIGHT requirements and limitations outlined above shall preempt all other HEIGHT regulations as required by the City of Dover Zoning

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Ordinance, and shall apply only to TELECOMMUNICATIONS FACILITIES. A Conditional Use Permit may be granted by the PLANNING BOARD to waive the HEIGHT limitations only if the intent of this Chapter is preserved (e.g. when it can be shown that there would be no increase in adverse impact) and the increased HEIGHT would provide a greater opportunity for co-location provided that:

- (1) The granting of the permit will not be detrimental to the public safety, health or welfare or injurious to other property, and will promote the public interest.
 - (2) A written narrative identifying a particular hardship or special circumstance that warrants granting the permit. Factors to be considered, but not limited to, in determining a hardship or special circumstance shall include:
 - (a) topography and other site features
 - (b) availability of Alternative site locations
 - (c) property location as relates to required coverage area
 - (d) size/magnitude of project and availability of co-location
 - (3) Necessary federal approvals and/or recommendations have been received.
- (3) SETBACKs and Separation. The following SETBACKs and separation requirements shall apply only to TELECOMMUNICATIONS FACILITIES, and shall supersede all other such standards found elsewhere in this Chapter or other applicable City Ordinances and Regulations.
- (a) TOWERS shall be set back a distance equal to one hundred percent (100%) of the HEIGHT of the TOWER from any boundary line, or other principal use STRUCTURE located on the property the TOWER is sited upon. This provision may be waived by the PLANNING BOARD provided the intent of this Chapter remains intact.
 - (b) TOWER guys, and all other accessory facilities shall conform with the minimum SETBACK requirement of the zoning district in which said facilities and appurtenances are located.
- (4) Security Fencing. TOWERS shall be enclosed by appropriate security fencing not less than six (6) feet in HEIGHT, and shall be equipped with an appropriate anti-climbing device.
- (5) Landscaping.
- (a) TOWERS shall be landscaped with a buffer of suitable vegetation that effectively screens the view of the TOWER compound from abutting residential property. The minimum standard buffer shall consist of a

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landscaped strip ten (10) feet wide outside the perimeter of the TOWER compound. Existing (natural) vegetation is preferred.

- (b) The requirement for landscaped screening may be reduced or waived entirely by the PLANNING BOARD in locations where the visual impact of the TOWER compound to abutting residential uses is deemed to be minimal.
 - (c) Existing mature tree growth and natural land forms present on the site shall be preserved to the maximum extent possible. Natural growth on the site may be deemed a sufficient buffer on large, remote, wooded LOTS.
- (6) Aesthetics and Lighting. The guidelines in this subsection shall govern the location of all TOWERS, and the installation of all ANTENNAS. However, the PLANNING BOARD may waive those requirements, via Conditional Use Permit, only if it determines that the goals of this Chapter are served thereby.
- (a) TOWERS shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
 - (b) At a TOWER site, the design of BUILDINGS and related STRUCTURES shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the TOWER facilities with the natural setting and previously developed environment. These BUILDINGS and facilities shall also be subject to all other Chapter 149 Site Review Regulations requirements.
 - (c) If an ANTENNA is installed on a STRUCTURE other than a TOWER, the ANTENNA and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting STRUCTURE so as to make the ANTENNA and related equipment as visually unobtrusive as possible.
 - (d) TOWERS shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
 - (e) TOWERS shall not contain any permanent or temporary SIGNS, writing, symbols, or any graphic representation of any kind.
- (7) Federal Requirements. All TOWERS must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate TOWERS and ANTENNAS. If such standards and

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regulations are changed, then the owners of the TOWERs and ANTENNAS governed by this Chapter shall bring such TOWERs and ANTENNAS into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring TOWERs and ANTENNAS into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with this Chapter 170-22.I of the TOWER or ANTENNA, as abandoned, at the owner's expense through the execution of the posted security.

- (8) **BUILDING Codes – Safety Standards.** To ensure the structural integrity of TOWERs and ANTENNAS, the owner of a TOWER shall ensure that it is maintained in compliance with standards contained in applicable local BUILDING codes and the applicable standards for TOWERs that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City concludes that a TOWER fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the TOWER, the owner shall have thirty (30) days to bring such TOWER into compliance with such standards. If the owner fails to bring such TOWER into compliance within thirty (30) days, such action shall constitute an abandonment and grounds for the removal, in accordance with this Chapter 170-22.I of the TOWER or ANTENNA, as abandoned, at the owners expense through execution of the posted security.
- (9) **Certification of safety standards and continued need.** The owner of a TOWER or ANTENNA shall provide an annual certification to the Planning and Community Development Department verifying compliance with BUILDING codes and safety standards. The certification shall also verify that the STRUCTURE is still needed for the operation of the owners' network. Said certification shall be submitted to the Planning and Community Development Department prior to December 31st of each year. Any owner who has failed to submit an annual certification shall be notified of the violation. A thirty (30) day extension for submission of a certification may be approved at the discretion of the Planning and Community Development Department. After notification of a violation by the Planning and Community Development Department subsequent failure to submit an annual certification shall constitute abandonment and be grounds for removal in accordance with 170-22.I).

F. Exemptions.

- (1) **City Use.** ANTENNAS or TOWERs owned, performing City functions, or otherwise controlled by the City shall be exempt from the requirements of this TELECOMMUNICATIONS FACILITY Ordinance. This exemption shall only

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be available if a license or lease authorizing such ANTENNA or TOWER has been approved by the City Council, and the City Council elects, subject to RSA's, to seek said exemption.

- (2) Amateur Radio. This section shall not govern any TOWER, or the installation of any ANTENNA that is owned and operated by a federally-licensed amateur radio station operator and the TOWER or ANTENNA is used for the exclusive purpose of amateur radio operations. This application adopts the provisions and limitations as referenced in RSA 674:16,IV.
- (3) Citizen Band Radios. This section shall not govern the installation of any ANTENNA that is used for the exclusive purpose of facilitating the use of a Citizen Band Radio, except any TOWERS in this section shall be limited to seventy (70) feet in HEIGHT.
- (4) Receive-Only ANTENNAS. This section shall not govern any TOWER, or the installation of any ANTENNA that is used exclusively for receive-only ANTENNAS, except any TOWERS in this section shall be limited to seventy (70) feet in HEIGHT.
- (5) Essential Services and Public Utilities. Henceforth, from the date of adoption of this ordinance, TELECOMMUNICATIONS FACILITIES shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the City's ordinances and regulations.

Siting for TELECOMMUNICATIONS FACILITIES shall be considered a use of land, and is addressed by this ordinance.

G. Restrictions for Siting on Garrison Hill

Notwithstanding the provisions outlined in Subsection C, the siting of additional TOWERS, monopoles, or use of Alternative STRUCTURES shall be prohibited on Garrison Hill in the City of Dover. Placement of new ANTENNAE media on the existing TOWERS on Garrison Hill shall be allowed only after obtaining a Conditional Use Permit from the PLANNING BOARD. However, the replacement and/or repair of existing ANTENNAE media on TOWERS on Garrison Hill is allowed by the Building Inspector, provided that there is no increase in the size or visual impact of the ANTENNAE. Performance standards to ensure that vistas, view sheds and view corridors are protected shall include the following elements:

- (1) The APPLICANT has demonstrated that the appearance, form or shape, color, and size of any ANTENNA media to be attached to preexisting TOWERS or monopole STRUCTURES is concealed or camouflaged or otherwise is harmonious with the immediately surrounding environment at Garrison Hill;

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- (2) Any equipment shelters supporting such additional ANTENNA shall be designed consistent with one of the following design standards:
 - (a) Equipment shelter shall be located in underground vaults; or
 - (b) Equipment shelter shall be designed consistent with Northern New England architectural styles and materials, with a roof pitch of at least ten and a half (10 1/2) and wood clapboard, red brick or shingle siding; or
 - (c) Equipment shelters shall be camouflaged behind an effective year round landscaped buffer, equal to the HEIGHT of the proposed BUILDING and/or wooden FENCE. PLANNING BOARD shall determine the style of fencing and/or landscaped buffer that is compatible with the NEIGHBORHOOD.
- (3) Any ANTENNA located on an existing STRUCTURE shall be concealed, to the extent technologically and commercially practicable, behind existing architectural features to limit the visibility of the ANTENNA from public ways.

H. Bonding and Security and Insurance.

- (1) Recognizing the extremely hazardous situation presented by abandoned and unmonitored TOWERS, the PLANNING BOARD shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the TOWER is abandoned and the TOWER owner is incapable and unwilling to remove the TOWER in accordance with Subsection I) below.
- (2) Bonding and surety shall be consistent with the provisions in the Chapter 155, Subdivision of Land. Furthermore, the PLANNING BOARD shall require the submission of proof of adequate insurance covering accident or damage.

I. Removal of Abandoned ANTENNAS and Towers.

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

170-23. IMPACT FEE Ordinance. [Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 06-

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22-2016 by Ord. No. 2016.06.08-010; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

A. Purpose: This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:

- (1) Assist in the implementation of the Master Plan and Capital Improvements Program;
- (2) Provide adequate public capital facilities necessitated by NEW DEVELOPMENT;
- (3) Assess an equitable share of the cost of public capital facilities to NEW DEVELOPMENT.

B. Authority

- (1) IMPACT FEES may be assessed to NEW DEVELOPMENT to compensate the City of Dover and the School District for the proportional share of capital facilities generated by NEW DEVELOPMENT in the City of Dover. Any person who seeks approval for NEW DEVELOPMENT may be required to pay an IMPACT FEE in the manner set forth herein.
- (2) The PLANNING BOARD may, as a condition of approval of any subdivision, site plan, or change of use, and when consistent with applicable Board regulations, require an APPLICANT to pay exaction for off-site improvements necessitated by the development.
- (3) Nothing in this section shall be construed to limit the existing authority of the PLANNING BOARD to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the PLANNING BOARD's authority to require off-site work to be performed by the APPLICANT, in lieu of paying an exaction for OFF-SITE IMPROVEMENTS, or the board's authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, ordinances or regulations.

C. ASSESSMENT Methodology

- (1) Proportionality: The amount of the IMPACT FEE shall be calculated by the PLANNING BOARD to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The PLANNING BOARD may prepare, adopt,

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or amend studies or reports that are consistent with the above standards, and which define a methodology for IMPACT FEE ASSESSMENT for public capital facilities and IMPACT FEE ASSESSMENT schedules therefore.

- (2) Existing Deficiencies: Upgrading of existing facilities and STRUCTUREs, the need for which is not created by NEW DEVELOPMENT, shall not be paid for by IMPACT FEEs.
- (3) In the case of NEW DEVELOPMENT created by conversion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.

D. Administration

- (1) Accounting: In accord with RSA 673:16, II and RSA 674:21, V(c), IMPACT FEEs shall be accounted for separately, shall be segregated from the City's general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of Dover or the Dover School District for the funding of capital improvements that are the subject of IMPACT FEE ASSESSMENT, IMPACT FEEs from the appropriate related capital facility IMPACT FEE accounts may be applied to pay debt service on such bonds or similar debt instruments.
- (2) ASSESSMENT and COLLECTION:
 - (a) Where subdivision or site plan approval is required for NEW DEVELOPMENT, IMPACT FEEs shall be assessed at the time of PLANNING BOARD approval of a subdivision PLAT or site plan. The amount of such ASSESSMENT shall be applicable to subsequent BUILDING construction within the approved subdivision or site plan for a period of four (4) years from the date of PLANNING BOARD approval. Once this four (4) year period has expired, remaining construction for which no BUILDING permit has been obtained shall be subject to the adopted fee schedule in force at the time the BUILDING permit application is made.
 - (b) With the exception of those PLATS and site plans meeting the conditions in A) above, and when no other PLANNING BOARD approval is required, or has been made prior to the adoption or amendment of the IMPACT FEE ordinance, IMPACT FEEs shall be assessed upon the issuance of a

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BUILDING permit. In such cases, the IMPACT FEE schedule in force at the time of the BUILDING permit application shall apply.

- (c) IMPACT FEES will be collected prior to or at the time of issuance of a Certificate of Occupancy, unless the PLANNING BOARD establishes an alternate, mutually acceptable schedule of payment of IMPACT FEES imposed on an ASSESSED PROPERTY. If an alternate schedule of payment is established, the PLANNING BOARD may require security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of IMPACT FEES. In no case will an IMPACT FEE payment be allowed to be made after the issuance of a CERTIFICATE OF OCCUPANCY.

- (3) Security: In the interim between ASSESSMENT and COLLECTION, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed IMPACT FEES.

- (4) Refund of Fees Paid: The current owner of record of property for which an IMPACT FEE has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
 - (a) When either the full or partial portion of the IMPACT FEE, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or

 - (b) When the City of Dover, or in the case of school IMPACT FEES, the Dover School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate their proportionate non-IMPACT FEE share of related capital improvement costs.

E. Appeals

- (1) A party aggrieved by a decision made by the Building Inspector regarding the ASSESSMENT or COLLECTION of IMPACT FEES authorized by this Section may appeal such decision to the PLANNING BOARD.

- (2) In accord with RSA 676:5, III, appeals of the decision of the PLANNING BOARD in administering this ordinance may be made to Superior Court, as provided in RSA 676:5, III and RSA 677:15.

F. Waivers

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The PLANNING BOARD may grant full or partial waivers of IMPACT FEES where the PLANNING BOARD finds that one (1) or more of the following criteria are met with respect to the particular public capital facilities for which IMPACT FEES are normally assessed:

- (1) The PLANNING BOARD may agree to waive all or part of an IMPACT FEE ASSESSMENT and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of IMPACT FEES under this provision that would involve a contribution of real property or the construction of capital facilities; the PLANNING BOARD shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of IMPACT FEE ASSESSMENT. The APPLICANT shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.

170-24. ACCESSORY DWELLING UNITS. [Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 06-22-2016 by Ord. No. 2016.06.08-010.]

Where permitted, an ACCESSORY DWELLING UNIT shall comply with the following:

- A. A maximum of one (1) ACCESSORY DWELLING UNIT (ADU) per property is permitted. In residential districts other than the R-40, more than one ADU may be allowed provided the second unit meets HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority. An ADU shall not be permitted on property where more than one DWELLING UNIT currently exists.
- B. Exterior ALTERATIONS, enlargements, or extensions of the SINGLE FAMILY DWELLING or detached ACCESSORY STRUCTURE are permitted in order to accommodate the ACCESSORY DWELLING UNIT. However, no such change is permitted which would ALTER the appearance of the SINGLE FAMILY DWELLING to look like a duplex or any other multi-family STRUCTURE (i.e., the house should not look like it was designed to occupy more than one family). The construction of any access ways into the house and/or detached garage which are required for access to the ACCESSORY DWELLING UNIT shall be located to the side or REAR of the BUILDING whenever possible.
- C. An ADU shall have an area of no less than three hundred (300) square feet and no greater than eight hundred (800) square feet. If located in a detached ACCESSORY

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STRUCTURE, the ACCESSORY DWELLING UNIT shall be located entirely on either floor of the STRUCTURE.

- D. A minimum of one dedicated OFF-STREET PARKING space shall be provided for the ADU.
- E. The SINGLE-FAMILY DWELLING (and detached ACCESSORY STRUCURE, when applicable) and LOT shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the SINGLE-FAMILY DWELLING. In order to ensure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the City, which shall be recorded in the Strafford County Registry of Deeds and a copy of which shall be provided to the Planning and Community Development Department and the City Assessor prior to the issuance of a CERTIFICATE OF OCCUPANCY.
- F. The property owner must occupy one of the two DWELLING UNITS. Electric, water and sewer utilities shall be metered on a single bill.
- G. Where municipal sewer service is not provided, the septic system shall meet NH Department of Environmental Services, Water Division requirements for the combined system demand for total occupancy of the premises.
- H. A certificate of use issued by the Zoning Administrator is required to verify conformance with the preceding standards. Said certificate shall be renewed annually. Applications to renew the certificate of use shall be due by January 1st following the date of approval of the certificate of use and then by every January 1st thereafter for so long as the ACCESSORY DWELLING UNIT continues. Fees shall be levied as set forth in the City of Dover Fee Schedule, as amended annually, for ACCESSORY DWELLING UNIT certificates of use and renewals.

ARTICLE V

FLOODPLAIN DEVELOPMENT

170-25. General Provisions. [Added on 08-12-2015 by Ord. No. 2015.07.22-017, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.].

- A. Authority. These rules and regulations are adopted by the City of Dover pursuant of the authority granted by RSA 674:16.
- B. Conflict and Severability. If any provision of this Section differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard

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shall be controlling. Should any provision of this Section be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Section as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

C. Purpose. [Amended on 04-20-05 by Ord. No. 13-2005] Certain areas of the City of Dover are subject to periodic FLOODING, causing serious damage to properties within these areas. Relief is available in the form of FLOOD insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the City of Dover has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Section. The City of Dover recognizes the need to minimize the potential loss of life and property during periods of FLOODING regulating the alteration and/or the DEVELOPMENT of those AREAS OF SPECIAL FLOOD HAZARD identified by FEMA. The following regulations shall apply to all lands designated as AREAS OF SPECIAL FLOOD HAZARD by FEMA in its "Flood Insurance Study for the County of Strafford, N.H." dated September 30, 2015, together with the following associated FLOOD INSURANCE RATE MAP panel numbers for the City of Dover: 33017CO218E, 33017CO302E, 33017CO305E, 33017CO310E, 33017CO320E, 33017CO330E, 33017CO340E, and 33017CO0405E, dated September 30, 2015, which are declared to be a part of Chapter 170 and are hereby incorporated by reference. The FLOOD INSURANCE STUDY is on file at the Department of Planning and Community Development.

D. Definitions. [Amended on 4-18-90 by Ord. No. 3-90]

As used in this Section the following terms mean:

AREA OF SHALLOW FLOODING means a designated AO zone on the FIRM with a one percent (1%) or greater annual possibility of FLOODING to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of FLOODING is unpredictable and where velocity flow may be evident. Such FLOODING is characterized by ponding or sheet-flow.

AREA OF SPECIAL FLOOD HAZARD means the land in the FLOODPLAIN within the City of Dover subject to a one percent (1%) or greater annual possibility of FLOODING in any given year. The area is designated on the FIRM as Zones A, AO, and AE. [Amended on 04-20-2005 by Ord. No. 13-2005]

BASE FLOOD means the FLOOD having a one percent (1%) chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION means the WATER SURFACE ELEVATION having a one percent (1%) chance of being equaled or exceeded in any given year, as defined

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on flood insurance rate map (FIRM) currently in effect and the Flood Insurance Study (FIS) report.

BASEMENT means any area of a BUILDING having its floor subgrade on all sides.

BUILDING means “STRUCTURE” as defined in this subsection.

Critical facilities means facilities that are vital to public health and safety, including police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, and water supply and waste treatment facilities.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to BUILDINGS or other STRUCTURES, mining, dredging, filling, grading, paving, EXCAVATION or drilling operations or storage of equipment or materials.

FEMA means Federal Emergency Management Agency.

FLOOD or FLOODING means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM) means an official map incorporated within Chapter 170 on which FEMA has delineated both the AREAS OF SPECIAL FLOOD HAZARD and the risk premium zones that are applicable to the City of Dover.

FLOOD INSURANCE STUDY (FIS) means an examination, evaluation and determination of FLOOD hazards and, if appropriate, corresponding WATER SURFACE ELEVATIONS, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or FLOOD-related erosion hazards.

FLOODPLAIN means any land area which is susceptible to being inundated by water from any source. (See definition of FLOODING.)

FLOOD PROOFING or FLOOD PROOFED means any combination of structural and non-structural additions, changes, or adjustments to STRUCTURES which reduce or eliminate FLOOD damage to real estate or improved real property, water and sanitation facilities, STRUCTURES and their contents.

Freeboard means an additional amount of height above the base flood elevation used as a factor of safety in determining the level at which a structure's lowest floor must be elevated or floodproofed.

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HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a STRUCTURE.

HISTORIC STRUCTURE means any STRUCTURE that is listed individually in the National Register of Historic Places (maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; individually listed on a local inventory of historic places, provided the local historic preservation program has been certified by either the appropriate state or federal program.

LOWEST FLOOR means the LOWEST FLOOR of the lowest enclosed area (including BASEMENT). An unfinished or FLOOD resistant enclosure, usable solely for parking of vehicles, BUILDING access or storage in an area other than a BASEMENT area is not considered a BUILDING's LOWEST FLOOR, provided, that such an enclosure is not built so as to render the STRUCTURE in VIOLATION of the applicable non-elevation design requirements set forth herein. [Amended on 4-18-90 by Ord. No. 3-90]

MANUFACTURED HOME means a STRUCTURE, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. MANUFACTURED HOME also includes park trailers, travel trailers and other similar vehicles placed on a site greater than one hundred eighty (180) days. This includes MANUFACTURED HOMES located in a MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION.

MANUFACTURED HOME PARK or MANUFACTURED PARK SUBDIVISION means a parcel or CONTIGUOUS parcels of land divided into two (2) or more MANUFACTURED HOME LOTS for rent or sale.

MEAN SEA LEVEL means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BASE FLOOD ELEVATIONS shown on a community's FLOOD INSURANCE RATE MAP (FIRM) are referenced.

NEW CONSTRUCTION means STRUCTURES for which the START OF CONSTRUCTION commenced on or after April 9, 1980 and includes any subsequent improvements to such STRUCTURES.

RECREATIONAL VEHICLE means a vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal

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projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the BASE FLOOD without increasing the WATER SURFACE ELEVATION more than a designated height.

RIVERINE means relating to, formed by or resembling a river, including tributaries, stream, brook, etc.

START OF CONSTRUCTION means the date the BUILDING permit was issued, provided the actual START OF CONSTRUCTION, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. START OF CONSTRUCTION includes SUBSTANTIAL IMPROVEMENTS. The actual start means either the first placement of permanent construction of a STRUCTURE on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of EXCAVATION; or the placement of MANUFACTURED HOME on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of STREETS and/or walkways; nor does it include EXCAVATION for a BASEMENT, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory BUILDINGS, such as garages or sheds not occupied as DWELLING UNITS or part of the main STRUCTURE. [Added 4-18-90 by Ord. No. 3-90]

STRUCTURE means a walled and roofed BUILDING, including a gas or liquid storage tank that is principally above ground, as well as a MANUFACTURED HOME.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a STRUCTURE whereby the cost of restoring the STRUCTURE to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the STRUCTURE before the damage occurred.

SUBSTANTIAL IMPROVEMENT or **SUBSTANTIALLY IMPROVED** means reconstruction, rehabilitation or other improvement to a STRUCTURE taking place during a five year period, in which the cumulative cost equals or exceeds 50 percent of market value of the STRUCTURE before the “start of construction” of the improvement. The period of accumulation begins when the first improvement of the structure is permitted subsequent to September 1, 2021. This term includes

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STRUCTURES that have incurred SUBSTANTIAL DAMAGE, regardless of actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a STRUCTURE to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the Building Official, and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a STRUCTURE listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the STRUCTURE's continued designation as a HISTORIC STRUCTURE.

Unsuitable development area means the area of a site that includes wetlands, water bodies, slopes exceeding a grade of 20% and totaling more than 2,000 square feet of contiguous area, land used for septic systems, floodways, and floodway fringe within the 100-year floodplain as shown on the latest FEMA maps accepted by the City, and public utility easements.

VIOLATION means the failure of a STRUCTURE or other DEVELOPMENT to be fully compliant with this Section. A STRUCTURE or other DEVELOPMENT without an elevation certificate, other certifications, or other evidence of compliance required herein is presumed to be in VIOLATION until such time as that documentation is provided.

WATER SURFACE ELEVATION means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of FLOODS of various magnitudes and frequencies in the FLOODPLAINS.

E. DEVELOPMENT Review. [Amended on 10-14-2009 by Ord. No. 2009.09.23-21]

- (1) All proposed DEVELOPMENT in any AREA OF SPECIAL FLOOD HAZARD shall require a permit. Prior to the issuance of a BUILDING permit by the Building Official, whether for NEW CONSTRUCTION (MANUFACTURED HOMES included) or the SUBSTANTIAL IMPROVEMENT thereon, the Department of Planning and Community Development shall determine whether said project site is located in an AREA OF SPECIAL FLOOD HAZARD. If said project site is so located, wholly or in part, in an AREA OF SPECIAL FLOOD HAZARD, then compliance with the rules and regulations contained herein shall be required.
- (2) Prior to the granting of subdivision approval, the Zoning Administrator shall determine whether the property is located within an AREA OF SPECIAL

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FLOOD HAZARD, and, if so situated, compliance with the rules and regulations contained herein shall be required.

- (3) Prior to the granting of site review approval, the Zoning Administrator shall determine whether said site is located within an AREA OF SPECIAL FLOOD HAZARD, and, if so situated, compliance with the rules and regulations contained herein shall be required.
- (4) Duties and responsibilities of the Zoning Administrator concerning development review shall include, but are not limited to:
 - (a) Ensure compliance with the rules and regulations contained herein.
 - (b) Ensure prior to any alteration or relocation of a watercourse that the required submittal and notification requirements in this Ordinance are met.
 - (c) Ensure the administrative and enforcement procedures detailed in RSA 676 are followed for any violations of this Ordinance.
- (5) For all development in an areas of special flood area that proposes to improve an existing structure, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, repairs of damage from any origin (such as, but not limited to flood, fire, wind or snow) and any other improvement of or work on such structure including within its existing footprint, the Zoning Administrator shall consult with the Building Official who shall determine if the proposed work constitutes substantial improvement or repair of substantial damage as defined herein. This determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of “substantial improvement.

If the applicant disagrees with the Building Official’s substantial improvement or repair of substantial damage determination, it may appeal said determination to the Zoning Board of Adjustment per 170-52 D.

F. Required Data.

Applications for DEVELOPMENT shall include the following:

- (1) Plans in duplicate, drawn to scale, showing the nature, location, dimensions and elevations of the area in question; existing or proposed STRUCTURES; fill storage of materials and drainage facilities; and the location of the

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foregoing. Specifically, the following information is required where appropriate:

- (a) A certified FEMA Elevation Certificate with as-built elevation data in relation to MEAN SEA LEVEL, of the LOWEST FLOOR, including BASEMENT, and including whether or not such STRUCTUREs contain a BASEMENT.
- (b) Elevation, in relation to MEAN SEA LEVEL, to which any STRUCTURE has been FLOOD PROOFED.
- (c) Certification by a registered engineer or architect that the FLOOD PROOFING methods for any nonresidential STRUCTURE meet the FLOOD PROOFING criteria in subsection L(2).

(2) Permit review. The Department of Planning and Community Development shall:

- (a) Review all DEVELOPMENT permits to determine that the requirements of this Section have been satisfied.
- (b) Review all DEVELOPMENT permits to determine that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the APPLICANT to certify these assurances to the Department of Planning and Community Development.
- (c) The Department of Planning and Community Development shall review all DEVELOPMENT permits to determine if the proposed DEVELOPMENT adversely affects the FLOOD-carrying capacity of the AREAs OF SPECIAL FLOOD HAZARD. For purposes of this Section, "adversely affects" means that the cumulative effect of the proposed DEVELOPMENT, when combined with all other existing and anticipated DEVELOPMENT, will not increase the BASE FLOOD ELEVATION more than one (1) foot at any point within the City of Dover.

G. Information to be Obtained and Maintained. [**Amended on 04-20-2005 by Ord. No. 13-2005**]

- (1) The Department of Planning and Community Development shall maintain and record for public inspection the certification of FLOOD PROOFING required in Subsection K(2) and a certified FEMA Elevation Certificate with

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the as-built elevation, in relation to MEAN SEA LEVEL, of the LOWEST FLOOR, including the BASEMENT, of all new or SUBSTANTIALLY IMPROVED STRUCTURES and shall include whether or not such STRUCTURES contain a BASEMENT and, if the STRUCTURE has been FLOOD PROOFED, the as-built elevation, in relation to MEAN SEA LEVEL, to which the STRUCTURE was FLOOD PROOFED. This information must be furnished by the APPLICANT.

- (2) In AREAS of SPECIAL FLOOD HAZARD, the Department of Planning and Community Development shall determine the BASE FLOOD ELEVATION in the following order of precedence according to the data available:
 - (a) In Zone AE, refer to the elevation data provided in the community's FLOOD INSURANCE STUDY and accompanying FIRM. [Amended 04-20-2005 by Ord. No. 13-2005]
 - (b) In Zone A the Building Official shall obtain, review and reasonably utilize any BASE FLOOD ELEVATION data available from any federal, state or other source including data submitted for DEVELOPMENT proposals (i.e. subdivisions, site review plans, etc.) to the community.
 - (c) In Zone A where the BASE FLOOD ELEVATION is not available, the BASE FLOOD ELEVATION shall be at least two (2) feet above the HIGHEST ADJACENT GRADE.
 - (d) In Zone AO, the BASE FLOOD ELEVATION is determined by adding the elevation of the HIGHEST ADJACENT GRADE to the depth number specified on the FIRM or, if no depth number is specified on the FIRM, at least two (2) feet.
- (3) The Department of Planning and Community Development shall maintain for public inspection all records pertaining to the provisions of this Section.

H. Alteration of Watercourses.

- (1) In RIVERINE situations, prior to the alteration or relocation of a watercourse, the APPLICANT for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the PLANNING BOARD in the form of a Conditional Use Permit application, in addition to the copies required by RSA 482-A:3. Further, the APPLICANT shall be required to submit copies of said notification to those adjacent communities as determined by the Department of Planning and Community Development, including notice of all scheduled hearings before the

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Wetlands Bureau, and notice of scheduled hearings before the Planning Board for Conditional Use Permits as required by Section 170-27, Conservation District & Section 170-27.1, Wetland Protection District.

- (2) The APPLICANT shall submit to the PLANNING BOARD, in the form of a Conditional Use Permit application, certification provided by a professional engineer assuring that the FLOOD-carrying capacity of an ALTERED or relocated watercourse can and will be maintained.

I. Interpretation of Boundaries.

- (1) The Department of Planning and Community Development shall make interpretations, where needed, as to the exact location of the boundaries of the AREA OF SPECIAL FLOOD HAZARD in a construction proposal; for example, where there appears to be a conflict between a mapped boundary and actual field conditions. To assist in this determination, the APPLICANT may be required to submit an accurate site plan showing FLOODING relationships, including elevations.
- (2) To determine accurately if a STRUCTURE is located in an AREA OF SPECIAL FLOOD HAZARD, the owner or APPLICANT may hire a licensed land surveyor or certified engineer to measure the distance from a physical feature on the FIRM to the STRUCTURE's location.
- (3) The STRUCTURE is considered borderline if it is located within one hundred (100) feet of a boundary. A certified engineer shall compare the BASE FLOOD ELEVATION and the lowest ground elevation at the borderline STRUCTURE's location to determine if the STRUCTURE is in or out of the AREA OF SPECIAL FLOOD HAZARD. If the engineer certifies the STRUCTURE as out of the AREA OF SPECIAL FLOOD HAZARD, but the Planning or Community Services Departments have historic or other data that confirms the property is prone to FLOODING, the Department of Planning and Community Development may request a Letter of Map Amendment (LOMA) from FEMA.

J. General Standards.

In all AREAs OF SPECIAL FLOOD HAZARD, the following standards are required:

- (1) Anchoring
 - (a) All NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTS shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the STRUCTURE resulting

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from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(b) All MANUFACTURED HOMEs to be placed or SUBSTANTIALLY IMPROVED within AREAs OF SPECIAL FLOOD HAZARD shall be elevated on a permanent foundation, such that the LOWEST FLOOR of the MANUFACTURED HOME is at least two (2) feet above the BASE FLOOD ELEVATION and shall be securely anchored to resist flotation, collapse or lateral movement by providing over-the-top or frame ties to ground anchors. Specific requirements shall be that:

(1) Over-the-top ties shall be provided at each of the four (4) corners of the MANUFACTURED HOME, with two (2) additional ties per side at intermediate locations, with MANUFACTURED HOMEs less than fifty (50) feet long requiring one (1) additional tie per side, or;

Frame ties shall be provided at each corner of the home, with five (5) additional ties per side at intermediate points, with MANUFACTURED HOMEs less than fifty (50) feet long requiring four (4) additional ties per side.

(2) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.

(3) Any additions to the MANUFACTURED HOME shall be similarly anchored.

(2) Construction materials and methods

(a) All NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTs shall be constructed with materials resistant to FLOOD damage.

(b) All NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTs shall be constructed using methods and practices that minimize FLOOD damage.

(c) All NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTs shall be constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are elevated at least 2 feet above the base flood elevation so as to prevent water from

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entering or accumulating within the components during conditions of FLOODING.

(3) Utilities and Storage

- (a) The APPLICANT shall provide the Department of Planning and Community Development with assurance that all new and replacement water supply systems, including on-site systems, shall be designed to minimize or eliminate infiltration of FLOOD waters into the system.
- (b) The APPLICANT shall provide the Department of Planning and Community Development with assurance that new and replacement sanitary sewerage systems, including on-site systems, shall be designed to minimize or eliminate infiltration of FLOOD waters into the systems and discharge from the systems into the FLOOD waters.
- (c) The APPLICANT shall provide the Department of Planning and Community Development with assurance that on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during FLOODING.
- (d) The storage of hazardous materials is prohibited.

(4) Subdivision proposals

- (a) All subdivision proposals shall be consistent with the need to minimize FLOOD damage.
- (b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize FLOOD damage.
- (c) All subdivision proposals shall include adequate drainage paths to guide FLOOD waters around and away from the proposed STRUCTUREs and to reduce exposure to FLOOD damage.
- (d) BASE FLOOD ELEVATION data shall be provided for subdivision proposals and other proposed DEVELOPMENT which contains at least fifty (50) LOTs or five (5) acres, whichever is less.

- (5) Specific provisions on unsuitable development areas which includes floodplains are referenced in and consistent with Dover Code Land Subdivision Regulations

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(157-21, 157-22, and 157-60) and the Dover Zoning Chapter 170-6, 170-27.2, and 170-28.2).

K. Specific Standards.

In all AREAs OF SPECIAL FLOOD HAZARD where BASE FLOOD ELEVATION data has been established per Subsection G.(2), the following provisions are required:

- (1) Residential construction, NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENT of any residential STRUCTURE shall have the LOWEST FLOOR, including the BASEMENT, elevated to at least two (2) feet above BASE FLOOD ELEVATION.
- (2) All NEW CONSTRUCTION or SUBSTANTIAL IMPROVEMENTs of nonresidential STRUCTUREs have the LOWEST FLOOR, including BASEMENT, elevated to at least two (2) feet above the BASE FLOOD ELEVATION; or together with attendant utility and sanitary facilities, shall:
 - (a) Be FLOOD PROOFED so that below the BASE FLOOD ELEVATION the STRUCTURE is watertight at least two (2) feet above the BASE FLOOD ELEVATION with walls substantially impermeable to the passage of water;
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Section.
- (3) MANUFACTURED HOMEs
 - (a) MANUFACTURED HOMEs shall be anchored in accordance with Subsection J.(1)(b).
 - (b) For new MANUFACTURED HOME PARK and MANUFACTURED HOME SUBDIVISIONs; for expansions to existing MANUFACTURED HOME PARKs and MANUFACTURED HOME SUBDIVISIONs; for existing MANUFACTURED HOME PARKs and MANUFACTURED HOME SUBDIVISIONs where the repair,

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reconstruction or improvement of the STREETS, utilities and pads equals or exceeds fifty percent (50%) of the value of the STREETS, utilities and pads before the repair, reconstruction or improvement has commenced; and for MANUFACTURED HOMES not placed in a MANUFACTURED PARK or MANUFACTURED HOME SUBDIVISION:

- (i) Stands or LOTs are elevated on compacted fill or on pilings so that the LOWEST FLOOR of the MANUFACTURED HOME will be at least two (2) feet above the BASE FLOOD level.
 - (ii) Adequate surface drainage and access for a hauler are provided.
 - (iii) In the instance of elevation on pilings, LOTs are large enough to permit steps; piling foundations are placed in stable soil no more than ten (10) feet apart and reinforcement is provided for pilings more than six (6) feet above the ground level.
- (c) RECREATIONAL VEHICLES placed on sites within areas of special flood hazard shall either: [Amended on 04-20-2005 by Ord. No. 13-2005]
- (i) Be on the site for fewer than one hundred eighty (180) days;
 - (ii) Be fully licensed and ready for highway use; or
 - (iii) Meet all standards of Subsection E.(1, 2 and 3) and the elevation and anchoring requirements for MANUFACTURED HOMES in Subsections K.(3)(a) and K.(3)(b).
- (4) For all NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTS, fully enclosed areas below the LOWEST FLOOR that are subject to FLOODING are permitted, provided that the enclosed areas meet the following requirements:
- (a) The enclosed area is unfinished or FLOOD resistant, usable solely for parking of vehicles, BUILDING access or storage.
 - (b) The area is not a BASEMENT.
 - (c) The area shall be designed to automatically equalize hydrostatic FLOOD forces on exterior walls by allowing for the entry and exit of FLOOD waters. Designs for meeting this requirement must either be

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certified by a professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to FLOODING shall be provided.
 - (ii) The bottom of all openings shall be no higher than one (1) foot above grade.
 - (iii) Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of FLOOD waters.
- (5) Proposed STRUCTUREs to be located on SLOPEs within Zone AO shall include adequate drainage paths to guide FLOOD waters around and away from the proposed STRUCTUREs.
- (6) Accessory structures
- (a) New construction and substantial improvement of any accessory structures with finished or habitable space shall follow the same requirements as the principal structure as specified in Sections J and K.
 - (b) Any new construction and substantial improvement of any accessory structures without finished or habitable space shall not be used for the storage of hazardous materials.
 - (c) It is recommended that any new construction and substantial improvement of any accessory structures without finished or habitable space meet the following standards:
 - (i) The structure is not located in the floodway;
 - (ii) The structure is wet flood proofed and designed to allow for the automatic entry and exit of flood water as detailed in Section K (4)(c);
 - (iii) When possible, the structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than the primary structure; and
 - (iv) Service facilities such as electrical, mechanical and heating equipment shall be elevated or dry flood proofed to or above the base flood elevation.
- (7) All new residential structures or residential developments and all new non-residential structures and non-residential developments shall have all driveways and/or all road access or streets constructed with the driving

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surface at or above base flood elevation to ensure safe ingress and egress during a 100-year flood.

(8) Critical facilities

(a) All new critical facilities are prohibited within areas of special flood hazard.

(b) Critical facilities that are to be replaced, substantially improved or meet the definition of substantial damage shall be constructed so that the lowest floor, including basement, shall be elevated or dry-flood proofed at least two (2) feet above the areas of special flood hazard. A critical facility shall have at least one access road connected to land outside the areas of special flood hazard and is capable of accommodating emergency services vehicles. The top of the access road shall be no lower than six inches below the base flood elevation of the area of special flood hazard.

L. REGULATORY FLOODWAYS.

Located within AREAS OF SPECIAL FLOOD HAZARD established in Subsections C and I are areas designated as REGULATORY FLOODWAYS. Since the REGULATORY FLOODWAY is an extremely hazardous area due to the velocity of FLOOD waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(1) Along watercourses that have a designated REGULATORY FLOODWAY, no encroachments, including fill, NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS or other DEVELOPMENT, are allowed within the designated REGULATORY FLOODWAY unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in FLOOD levels within the community during the BASE FLOOD discharge. In Zone A, the Department of Planning and Community Development shall obtain, review and reasonably utilize any REGULATORY FLOODWAY data available from a federal, state or other source as criteria for requiring that DEVELOPMENT meet the REGULATORY FLOODWAY requirements of this Subsection.

(2) Along watercourses that have not had a REGULATORY FLOODWAY designated, on NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS or other DEVELOPMENT (including fill), shall be permitted within Zone AE, unless it is demonstrated that the cumulative effect of the proposed DEVELOPMENT, when combined with all other existing and anticipated DEVELOPMENT, will not increase the WATER

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SURFACE ELEVATION of the BASE FLOOD more than one (1) foot at any point within the community. [Amended on 04-20-2005 by Ord. No. 13-2005]

- (3) If Subsection 1 is satisfied, all NEW CONSTRUCTION and SUBSTANTIAL IMPROVEMENTs shall comply with all applicable FLOOD hazard reduction provisions set forth herein.

M. Variances and Appeals.

- (1) Any order, requirement, decision or determination of any official of the Department of Planning and Community Development made under this Section may be appealed to the ZONING BOARD of ADJUSTMENT as set forth in RSA 676:5.
- (2) If the APPLICANT, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the APPLICANT shall have the burden of showing, in addition to the usual variance standards under NH statute:
 - (a) That the variance will not result in increased FLOOD heights, additional threats to public safety, or extraordinary public expense.
 - (b) That if the requested variance is for activity within a designated REGULATORY FLOODWAY, no increase in FLOOD levels during the BASE FLOOD discharge will result.
 - (c) That the variance is the minimum necessary, considering the FLOOD hazard, to afford relief.
- (3) The ZONING BOARD of ADJUSTMENT shall notify the APPLICANT in writing that: (i) the issuance of a variance to construct below the BASE FLOOD level will result in increased premium rates for FLOOD insurance up to amounts as high as twenty-five (\$25.00) dollars for one hundred (\$100.00) dollars of insurance coverage, and (ii) such construction below the base level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- (4) The Department of Planning and Community Development shall:
 - (a) Maintain a record of all variance actions, including their justification for their issuance, and;

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- (b) Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE VIII

OVERRIDING DISTRICTS

170-26. Additional Regulations.

All overriding districts shall be superimposed upon other zoning districts established in this Chapter. The regulations stipulated by the overriding districts shall be in addition to the regulations of the underlying zoning districts and other applicable city ordinances.

170-27. Conservation District. [Amended on 5-13-87 by Ord. No. 11-87; Amended on 9-14-88 by Ord. No. 15-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 02-17-99 by Ord. No. 25-98; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 06-22-2016 by Ord. No. 2016.06.08-010; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

- A. Purpose. In the interest of environmental quality, public health, resource conservation and the general welfare of the public, the regulations of this district are designed to guide development activities in areas with extended periods of high water table, with susceptibility to flooding and with unique or fragile geologic, ecological or nature features as follows:
- (1) To prevent the development of STRUCTUREs and land uses on naturally occurring wetlands and flood-prone areas which would contribute to pollution of surface and ground water by sewage or other contaminants.
 - (2) To prevent the destruction of natural wetlands or aquifer areas which provide flood protection, recharge of groundwater supply and augmentation of stream flow during dry periods.
 - (3) To prevent unnecessary or excessive expenses to the city to provide and maintain essential services and utilities which arise because of inharmonious use of wetlands and other environmentally sensitive areas.
 - (4) To encourage those uses that can be most appropriately and safely located in wetland and other environmentally sensitive areas.
 - (5) To preserve existing natural drainage systems and the vegetation and wildlife habitats therein.
 - (6) To preserve wetlands and other environmentally sensitive areas for other ecological reasons inter alia, those cited in RSA 483-B.

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- (7) To preserve and enhance those aesthetic values associated with waterways and the natural shoreline.
- (8) To protect public health and safety by minimizing hazards, including soil erosion, storm water runoff, SLOPE instability risks, and environmental degradation associated with development on steep and/or unstable SLOPES.

B. Location. The Conservation District is hereby determined to consist of the following:

- (1) Those areas within a minimum of one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII) of any water body, river, stream, swamp or marsh subject to tidal action and those areas within a minimum of one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII) of any freshwater river or natural pond.
- (2) Those areas within a minimum of fifty (50) feet of the reference line (as defined in RSA 483-B:4, XVII) of any stream, brook or other freshwater body.
- (3) Those areas owned by and situated in the City of Dover and known as LOTs:

Map 28, LOT 32; Map D, LOT 1; Map C, LOTS 5, 7 and 12; Map H, LOTS 58 and 63; Map 40, LOTS 10A, 13, and 17; Map F, LOTS 14 and 42; Map A, LOT 29A-1; and Map 37, LOT 40.
- (4) Those areas with SLOPES in excess of twenty percent (20%), (e.g. four (4) feet vertical in twenty (20) foot horizontal distance) and totaling more than two thousand (2,000) square feet of CONTIGUOUS area.

C. Conditional Use Permits. Conditional Use Permits may be granted by the PLANNING BOARD for the following uses within the Conservation District:

- (1) STREETS, roads and other access ways and utility rights-of-way, communications equipment, easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands or other environmentally sensitive areas, where it is physically impossible to locate such ways over land not so zoned. Economic advantage alone shall not be deemed a sufficient reason for such a routing.
- (2) The undertaking of a use not otherwise permitted in the Conservation District, which may include the erection of a STRUCTURE, dredging, filling, draining or otherwise ALTERING the surface configuration of the land, provided that:

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- (a) The APPLICANT shall demonstrate that the proposed use is essential to the productive use of land not in the district; is located and constructed to minimize any detrimental impact of such use upon the surface waters or other environmentally sensitive areas, where it is physically impossible to locate such use on land not in the district; and economic advantage alone shall not be deemed a sufficient reason for such proposed use.

- (b) A soil erosion and sedimentation control plan is submitted and followed to verify the planned avoidance of sediment pollutant runoff to bodies of water. This plan will address the following (if applicable), but should not be limited to:
 - (i) stabilization of exposed soils and soil stockpiles;
 - (ii) protection of steep SLOPEs from erosion;
 - (iii) construction site waste management;
 - (iv) inspection and maintenance of runoff control measures (BMPs);
 - (v) minimization of land clearing;
 - (vi) stabilization of drainage ways;
 - (vii) installation of perimeter controls;
 - (viii) installation of sediment trapping devices; and
 - (ix) storm drain inlet protection.

- (c) Necessary state and federal approvals have been applied for. Said permits shall be received prior to the issuance of the Conditional Use Permit by the Planning and Community Development Department.

- (d) A written review by the Conservation Commission of the environmental effects of the proposed use upon the area in question has been submitted. The Commission's review shall address the following, but is not limited to:
 - (i) attempted avoidance of the impact;
 - (ii) minimization of the impact;
 - (iii) planned mitigation of the effects of the impact; and
 - (iv) efficacy of the soil erosion and sedimentation control plan.

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- D. Procedures for subdivision. No subdivision of land shall be permitted which would create a LOT or parcel or leave as a remainder a LOT or parcel which does not have, outside the Conservation District, an area equal to the minimum LOT size required for the underlying zoning district if unless such a LOT or parcel is to be permanently dedicated to OPEN SPACE or natural uses and is to be dedicated to a public or private agency having as a purpose the holding of such land in a natural state in perpetuity. The lot area outside of the Conservation District may be non-contiguous.
- E. Other provisions.
- (1) Reference is hereby made to RSA 483-B, the Comprehensive Shoreland Protection Act which evidences a state concern over preservation of such lands. It is intended that the provisions of that statute shall apply and that in all cases the more restrictive law should apply.
 - (2) In all cases where the Conservation District is superimposed over another zoning district in the city, that district whose regulations are the more restrictive shall apply.
 - (3) The Conservation District adopted herein is hereby designated as OPEN SPACE under RSA 79-A, and all relevant provisions of RSA 79-A relating to current use ASSESSMENT of such property shall apply.
 - (4) The provisions of RSA 483-B:9,V(a) shall apply to the portions of the "Conservation District" as described in Subsections B (1) and B (2), that are within fifty (50) feet of the reference line (as defined in RSA 483-B:4, XVII) Limitations include restrictions on chemical and fertilizer use, preservation of rocks and stumps and their root systems, and restrictions on removal of ground cover, trees and saplings.
 - (5) The provisions of RSA 483-B:9,V(b) shall apply to the portion of the "Conservation District" as described in Subsection B (1), that is between fifty (50) and one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII). Limitations include restrictions on the amount of vegetation that can be removed within the area.
 - (6) Upon the discretion of the Building Inspector, a STRUCTURE may be erected within the Conservation District as described in Subsection B(1) up to but never closer than seventy-five (75) feet of the reference line (as defined in RSA 483-B:4, XVII), provided that:
 - (a) The LOT existed within the Conservation District, as recorded in the Strafford County Registry of Deeds, prior to the effective date of this subsection.

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- (b) The STRUCTURE cannot feasibly be constructed on a portion or portions of the LOT which are outside the one-hundred-foot (100) SETBACK of the Conservation District.
 - (7) Customary ACCESSORY STRUCTUREs shall be allowed within the Conservation District as described in Subsection B(1) but in no case closer than seventy- five (75) feet to the reference line (as defined in RSA 483-B:4, XVII).
 - (8) Projects which have been officially accepted by the PLANNING BOARD prior to the October 10, 1986, amendment posting date shall be exempt of all revisions herein.
 - (9) The PLANNING BOARD may assess the APPLICANT reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.
 - (10) The city shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.
- F. The provisions of the Conservation District adopted herein shall not be binding on Cochecho waterfront LOTS located in Urban Exemption Area, as approved by the NH Department of Environmental Services Commissioner on August 4, 2008, per File # 2008-2000372. (See map on file in the Planning and Community Development Department)
- G. Boat Docks.
- (1) A boat dock may be allowed on a residential LOT, provided that the following provisions are met:
 - (1) The dock is for recreational and ACCESSORY USE only.
 - (2) One (1) dock is allowed per LOT.
 - (3) The beneficiary of an easement or right-of-way, recorded at the Strafford County Registry of Deeds prior to the October 10, 1986 amendment posting date for the purpose of providing water access to non-waterfront LOTS, shall be entitled to one (1) boat dock within the prescribed easement or right-of-way.
 - (4) All applicable state and federal approvals have been received.
 - (5) A dock may be provided a maximum space for two (2) slips. Joint use or private docks by adjoining waterfront residents, not to exceed two (2) slips per LOT, shall be encouraged when appropriate.

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170-27.1. Wetland Protection District. [Amended on 9-14-88 by Ord. No. 15-88; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

- A. Authority. By the authority granted under RSA 674:16 and 17, this section is designed to protect the wetland areas and surface waters within the City of Dover from certain activities, the impact of which results in the ALTERATIONS or destruction of wetland areas.
- B. Purpose and intent. It is intended that this section shall:
- (1) Prevent the development of STRUCTUREs and land uses on wetlands, which will contribute to pollution of surface and ground water by sewerage, toxic substances or sedimentation.
 - (2) Prevent the destruction of, or significant changes to, wetlands which provide flood protection, recharge the groundwater supply and augment stream flow during dry periods and filtration of water flowing into ponds and streams.
 - (3) Avoid and minimize impacts to wetlands and wetland buffers to the maximum extent practicable and when impacts are unavoidable, minimize impacts to the greatest extent practicable.
 - (4) Protect unique and unusual natural areas and rare, threatened, and endangered species.
 - (5) Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 482-A:1.
 - (6) Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.
 - (7) Prevent unnecessary or excessive expense to the city for the purpose of providing and/or maintaining essential services and utilities, which might be required as a result of misuse or abuse of wetlands.
 - (8) Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.
 - (9) Preserve and enhance the aesthetic values associated with wetlands in the City of Dover.
 - (10) Avoid the high costs of constructing heavy STRUCTUREs and prevent damage to STRUCTUREs and abutting properties caused by inappropriate development in wetland areas.

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C. District boundaries

- (1) The Wetlands Protection District is hereby determined to be all areas of wetlands. A “Wetland” means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

- (2) "Hydrophytic (water-loving) vegetation" is defined as those plants identified in the "2018 Wetland Plant List Northeast Region" of the United States Fish and Wildlife Service. The more common names associated with these vegetative communities are "bogs," "swamps," "marshes," (saltwater and freshwater) and "tidal wetlands."

D. Procedural requirements.

- (1) Presence of Wetland Protection District on site.
 - (a) Where field investigation indicate that a Wetland Protection District is present on a proposed development site, those wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January, 1987) or successor document. The hydric soils component of wetlands delineations shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 4, May 2017, published by the New England Interstate Water Pollution Control Commission) or successor document. Pursuant to RSA 310-A:75 through 310-A: 87, a Certified Wetland Scientist shall conduct this delineation.

A Certified Wetland Scientist is defined as: “a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor, and who has been duly certified by the board.” (RSA 310-A:76) If necessary, a botanist shall be used in conjunction with the wetlands scientist to identify wetland vegetation where

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required. The botanist shall have equivalent and practical experience to that of the wetlands scientist.

- (b) Applications for a BUILDING permit, subdivision and site plan approval shall locate and depict on the survey/subdivision PLAT/site plan all Wetland Protection Districts on the subject parcel. Any APPLICANT seeking said approval(s) will be responsible for providing this information before the appropriate approval or permit can be granted.
 - (c) The entire length of the upland limit of the wetland shall be marked at regular intervals with pink and black striped construction tape prior to, and maintained for the full duration of, any construction-related activities. The APPLICANT may also be required to place and maintain wooden stakes and/or construction tape at appropriate intervals along the wetlands buffer boundary to provide sufficient visual evidence of the buffer boundary during construction, if development is proposed within twenty feet of the wetlands buffer. The APPLICANT may be required to affix some form of marker or tag acceptable to the City to permanently delineate the wetlands buffer boundary at appropriate intervals, as determined by the Conservation Commission and PLANNING BOARD, for the purpose of notifying future landowners of the presence of the wetlands buffer. The presence of wetlands on residential properties created as part of a major subdivision shall be documented in the parcel's deed.
- (2) The Planning and Community Development Department shall notify the Conservation Commission of all projects and construction proposed in wetland districts for the purpose of allowing the Commission to make recommendations prior to approval. Consistent with RSA 482-A:11 III, the Conservation Commission shall have up to 40 days to make recommendations relative to a standard wetlands impact application and up to 21 days to make recommendations relative to an expedited permit per RSA 482-A:11, III(b)(1). The Conservation Commission, in acting on an application for a conditional use permit in the Wetlands Protection District, may attach conditions to its recommendations including but not limited to recommendations for more extensive buffers, additional plantings in areas to be re-vegetated, performance guarantees, impact mitigation measures, and a reduction in proposed impervious surfaces.
- (3) In the event that the accuracy of the boundaries submitted by the APPLICANT is suspect, the PLANNING BOARD may call upon the services of a certified wetland scientist and/or botanist to reexamine said area and report the findings to the PLANNING BOARD for a boundary determination. The APPLICANT shall pay the cost of said services.

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- (4) The Building Inspector shall not issue a BUILDING permit for construction and the PLANNING BOARD shall not approve a site plan or subdivision PLAT unless such construction activity or proposal conforms to the provisions of this Chapter.
- (5) Standards established herein shall constitute the rules of overlay zones and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other regulation, the more-restrictive requirement shall control.
- (6) The city shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.

E. Permitted uses.

E. Permitted Uses. Any use otherwise permitted by this Chapter, except on-site sewage disposal systems, may be permitted in a Wetland Protection District. Any use permitted under Section E (1) must first receive conditional use approval as provided for in Section F before any BUILDING permit or subdivision/site plan can be approved.

- (1) Crossing of a Wetland Protection District as provided for in Section F(1).
- (2) The construction or reconstruction of FENCES, footbridges, catwalks, boat docks and wharves does not require a conditional use permit, provided that:
 - a. Said STRUCTURES are constructed on posts or pilings so as to permit unobstructed flow of water and are designed in compliance with the New Hampshire Wetlands Board Code of Administrative Rules (Env-Wt 300, 500 and 600).
 - b. The natural contour of the wetland is preserved.
 - c. All other applicable provisions of the city's Zoning Ordinance have been met.

F. Conditional use approval.

- (1) Conditional use approval may be granted by the PLANNING BOARD (RSA 674:21II) after proper public notice and public hearing, for construction within the Wetland Protection District or buffer. Said construction may include, but is not

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limited to a road or other accessway, utility right-of-way, communication lines, power lines and pipelines, STRUCTUREs, and parking LOTs provided that the proposed construction complies with the following standards:

- (a) *Practicable Alternative:* There is no practicable alternative that would have a less adverse impact on the area.
 - (b) *Avoidance:* The potential impacts have been avoided to the maximum extent practicable. The APPLICANT will demonstrate by plan and example that the proposed construction represents the least impacting alternative.
 - (c) *Minimization:* Any unavoidable impacts have been minimized. No reasonable Alternative to the proposed construction exists which does not impact a wetland or which has less detrimental impact on a wetland. Design, construction and maintenance methods will be prepared by a registered engineer to minimize detrimental impacts to the wetlands and will include restoration of the site as nearly as possible to its original grade.
 - (d) *Mitigation:* If the APPLICANT is required by State rules to prepare a compensatory mitigation plan, the APPLICANT shall provide the Conservation Commission and PLANNING BOARD with one copy each of said plan for their review.
 - (e) Approval for the wetlands impact has been received from the NHDES Wetlands Bureau pursuant to Section G (3), below.
- (2) The burden of proof that the conditions specified in Subsection F (1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the conditional use approval, except as herein provided.
- (3) The conditional use approval shall apply only to the project specified at the time of approval and shall not be transferable to a different project.
- (4) If deemed necessary by the PLANNING BOARD, prior to the granting of a conditional use approval, the APPLICANT shall agree to submit a performance security to ensure that all operations are carried out in accordance with an approved design. This security shall be submitted in an amount sufficient to complete all specified work and repair damage to any wetland area in which no work has been authorized. The security shall be submitted in an amount, with surety and conditions satisfactory to the PLANNING BOARD. The security shall be submitted and approved prior to issuance of any permit authorizing construction.

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- (5) The PLANNING BOARD may assess the APPLICANT reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.

G. Specific provisions.

(1) Wetland Buffers.

- (a) *Buffers Established.* Buffers are hereby established around and encircling all wetlands other than those that were created as legally permitted sedimentation/detention basins or roadside drainage ditches. The minimum width of the wetland buffers shall be fifty (50) feet horizontal distance as measured outward from the perimeter edge of the wetland. Wherever a permit to fill a wetland has been issued by either the New Hampshire Department of Environmental Services (NHDES) or the U.S. Army Corps of Engineers (USACOE), the perimeter of the wetland shall be deemed to be the new edge between the fill as placed in accordance with the permit and the remaining wetland. If there is no remaining wetland, there is no buffer. All other wetland edges shall be determined in accordance with Section D (1) above
- (b) *Natural Conditions to be Maintained within Buffers.* Where wetland buffer disturbance is allowed pursuant to a state or federal permit, or a conditional use permit, restoration of the disturbed area is required. Restoration is defined as filling of ruts or excavated area with similar soils while maintaining original grade. Applications for a City of Dover BUILDING permit that includes a temporary disturbance of wetlands buffers, pursuant to Section G (1) (e) (iv) below, shall include a “Wetlands Buffer Encroachment and Restoration Plan.” Said plan shall be submitted, reviewed and approved by Building Inspector, in consultation with City staff, prior to the disturbance. Replanting to restore buffers shall be with native non-invasive species specified in the “Wetlands Buffer Encroachment and Restoration Plan”. Implementation of the plan shall include the clear delineation of the boundaries of wetland buffers in the field using construction tape or other clear marking devise. Mowing to maintain an existing lawn or field within a wetland buffer area is allowed without a permit, as specified in Section G (1)(e), below, provided the roots of the vegetation are not disturbed and the ground is frozen or sufficiently dry to avoid making ruts.
- (c) *Certain Uses Prohibited in Buffers.* The following uses and activities are prohibited within a wetland buffer:

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- (i) The establishment or expansion of salt storage, JUNKYARDS, resource recovery facilities, transfer stations, landfills, or solid or hazardous waste facilities;
- (ii) The BULK storage of chemicals, petroleum products, or toxic and hazardous materials;
- (iii) The dumping or disposal of snow and ice collected from roadways and parking LOTs;

(d) *Uses Allowed Only With a Conditional Use Permit.* The following uses and activities are allowed within a wetland buffer only if a conditional use permit is obtained in accordance with Section F above:

- (i) All uses not specifically prohibited in Section G (1) (c) above, or specifically exempted in Section G (1) (e) below.
- (ii) The erection or construction of a BUILDING or STRUCTURE, excluding FENCES that meet the requirements of 170-33, or the construction of parking LOTs or loading areas.
- (iii) Timber harvesting, except as conducted in accordance with the terms and provisions of RSA 227-J, Timber Harvesting.
- (iv) The removal of stumps and roots (grubbing), the recontouring or grading of the land, or the placement of impervious surfaces or creation of storm water detention ponds.
- (v) The installation of water, sewer, or buried electrical or telecommunications cables.
- (vi) The installation of water-supply wells.

(e) *Uses Allowed Without a Conditional Use Permit.* The following uses and activities are allowed within a wetland buffer with the noted conditions:

- (i) Activities within wetlands jurisdictional areas that are allowed without a State of New Hampshire Dredge and Fill Permit, in accordance with NHDES Rules Env-Wt 308.01(a) and 308.02 – repair of an existing legal STRUCTURE; or successor rules.
- (ii) The removal of vegetation in accordance with NHDES Rules Env-Wt 303.05(b), or successor rules, provided the roots of the vegetation are

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not disturbed and the ground is frozen or sufficiently dry to avoid making ruts.

- (iii) The installation of monitoring or test wells or geotechnical borings completed in accordance with NHDES Rules Env-Wt 309.02(i) or successor rules.
 - (iv) Temporary disturbance of the wetland buffer to facilitate construction activities completed under a valid City of Dover BUILDING permit, provided the temporary disturbance is restored in accordance with Section G (1) (b) above.
- (2) No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any Wetland Protection District. In new subdivisions approved subsequent to adoption of this section, there must be sufficient LOT size to place a house, a state-approved septic system, where applicable, and a state-approved well, where applicable, without locating them in a wetland. This provision can be waived if a conditional use approval is obtained from the PLANNING BOARD.
- (3) A state dredge and fill application shall be submitted for any proposed change to a wetland (RSA 482-A).

H. Filled lands and preexisting uses.

- (1) Lands which may have been wetlands but were filled under properly issued federal, state and local permits granted prior to the adoption of this section will be judged according to the soils and flora existing at the time the application for BUILDING permit or subdivision is made.
- (2) STRUCTUREs and uses existing at the time of the adoption of this section that do not comply with the rules stated herein shall be regulated in accordance with 170-40 and 170-41 of this Chapter.

I. Exemption for one- and two-family residential STRUCTUREs, existing LOTs, impoundments and maintenance dredging.

- (1) Notwithstanding other provisions of this Chapter, the construction of additions and/or extensions to one- and two-family dwellings shall be permitted within the Wetlands Protection District or buffer, provided that:
 - (a) The dwelling(s) lawfully existed prior to the effective date of this section;

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- (b) The proposed construction conforms to all other applicable ordinances and regulations of the City of Dover; and any required State of New Hampshire Dredge and Fill Permit is obtained.
 - (c) The design and construction of the proposed use will be done in a manner which minimizes the impacts on the affected wetland, including storage of EXCAVATION and construction material outside the wetland and installation of siltation FENCE and/or hay bales to contain erosion of the construction site.
- (2) Notwithstanding other provisions of the ordinance, a new one- or two-family dwelling shall be permitted in the Wetlands Protection District or buffer, on an existing LOT, provided that all of the following conditions are found to exist:
- (a) The LOT for which an approval/permit is sought was an official LOT of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this amendment was posted and published in the city.
 - (b) The STRUCTURE for which the approval/permit is sought cannot be feasibly built on a portion or portions of the LOT, which are outside the Wetlands Protection District.
 - (c) Due to the provisions of the Wetlands Protection District, no reasonable and economically viable use of the LOT can be made without the exemption.
 - (d) The design and construction of the proposed STRUCTURE will, to the extent practical, be consistent with the purpose and intent of this ordinance.
 - (e) The proposed STRUCTURE will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater or other reason.
 - (f) The design and construction of the proposed STRUCTURE will be done in a manner which minimizes the impacts on the affected wetland, including storage of EXCAVATION and construction material outside the wetland and installation of siltation FENCE and/or hay bales to contain erosion of the construction site.
- (3) Maintenance dredging for navigational purposes (where a dredge spoil site has been approved by the PLANNING BOARD) are exempt from the regulations stated herein. Notwithstanding, copies of permits where required by the New Hampshire Department of Environmental Services and the United States Army Corp. of Engineers shall be submitted to the PLANNING BOARD prior to construction.

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(4) The burden of proof that the conditions specified in Subsection I (1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the approval/permit.

J. Separability. Should any provision of this section be declared invalid by a final court decision, the same shall not affect the validity of this section as a whole or part thereof, other than the part declared to be invalid.

170-27.2. TRANSFER OF DEVELOPMENT RIGHTS. [Amended on 10-31-90 by Ord. No. 16-90; Amended on 01-22-2003 by Ord.35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 08-22-2018 by Ord. No. 2018.08.08-009, Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

A. Authority. By the authority granted under RSA 674:21, this section creates overlay district(s) for the purpose of transferring DEVELOPMENT RIGHTS (TDR) within said districts.

B. Purpose and Intent. Within the City of Dover there are certain lands that possess significant conservation features, including but not limited to unsuitable development areas, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic viewsheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition.

Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission who are active in protecting and preserving OPEN SPACE.

C. Applicability. Upon request by an APPLICANT for development approval and at the discretion of the PLANNING BOARD, the provisions of this subsection may apply to the district(s) defined in this subsection E below.

D. Districts Defined.

(1) The Industrial TDR DISTRICT is hereby determined to be any IT or CM zoning district as shown on the Zoning Map for the City of Dover, New Hampshire, adopted December 9, 2009. The SENDING AREA is defined to be OPEN SPACE and related SETBACKS as defined by the City of Dover Wetland Protection District, Chapter 170-27.1, which are located in any IT or CM zoning

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district. The RECEIVING AREA is defined to be all remaining land in be any IT or CM zoning district.

(2) The Residential TDR DISTRICT is hereby determined to be Residential districts noted or displayed on the Zoning Map for the City of Dover, New Hampshire, adopted December 9, 2009. The SENDING AREA is defined to be any land preserved by the City of Dover through conservation programs in the R-40 or R-20 residential zoning districts. The RECEIVING AREA is defined to be all non-R-40 or R-20 zoning districts east of the Spaulding Turnpike which allow residential development.

a. If the units created are purchased, the receiving area may be any zoning district that allows residential development.

E. Procedural Requirements.

(1) At the discretion of the PLANNING BOARD, an APPLICANT for development approval within the RECEIVING AREA of the defined Industrial TDR DISTRICT may apply the performance standards specified in Subsection F below in return for the acquisition of land or DEVELOPMENT RIGHTS from the SENDING AREA within the same TDR DISTRICT. The performance standards for the Residential TDR DISTRICT are outlined in Subsection G below.

(2) A certified boundary survey of the associated land in the SENDING AREA shall be submitted as a supplement to the site plan or subdivision plan for development within the RECEIVING AREA.

(3) The owner of the subject OPEN SPACE within the SENDING AREA of the TDR DISTRICT shall SIGN all application materials as a co- APPLICANT of the development application. For residential application, proof of an agreement to sell DEVELOPMENT RIGHTS must be provided by the Conservation Commission.

(4) A sketch plan estimating layout of the development site and identifying the OPEN SPACE associated with the plan shall be submitted to the PLANNING BOARD for review at a regularly scheduled meeting. The PLANNING BOARD, within thirty (30) days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections G and H below. Following this decision, a final application is prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section.

a. The determination of whether a proposed TDR project requires a sketch plan review shall be made by the Director of Planning and Community

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Development based on initial discussions with the applicant. The determination, made in writing, shall be made prior to the submittal of any plans and shall specify the Director's reasoning, including a review of known conditions, including: traffic, existing layout/topography, environmental. This determination shall be included in the staff report to the Board. If the applicant does not agree with the Director's determination, they may appeal the decision to the Board at its next meeting.

- b. If the sketch plan requires an environmental Conditional Use Permit to develop homes, the applicant must appear before the Conservation Commission for review and endorsement prior to the Planning Board's review.

- (5) A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated OPEN SPACE within the SENDING AREA. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with subsection I below. The designation of the land protection agency to hold the easement shall be approved by the PLANNING BOARD.

F. Industrial Performance Standards.

- (1) Land within a SENDING AREA, when surveyed, approved by the PLANNING BOARD and preserved by easement or covenant as specified in Subsection E above, may be counted for the OPEN SPACE requirement for a development site in a RECEIVING AREA. The amount of land preserved in a SENDING AREA shall equal or exceed the OPEN SPACE requirement for the development site, but in no case be less than one (1) acre. Notwithstanding, development sites within the IT and CM zoning districts shall maintain OPEN SPACE or landscaped area on at least ten percent (10%) of the site. The design of the development site shall locate the OPEN SPACE or landscaped area to maximize the aesthetic value of the site.
- (2) The minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS.
- (3) The minimum FRONTAGE requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD.

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- (4) SETBACKS for parking, paved areas, and BUILDINGS may be waived by the PLANNING BOARD, and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, BUILDINGS shall be at least one hundred fifty (150) feet from residential STRUCTURES that exist on the date of enactment of the IT and CM Zoning districts, and seventy five (75) feet from the LOT LINE of a disagreeing residential ABUTTER.
- (5) The developer shall record covenants that address architectural considerations for STRUCTURES, SIGNAGE and lighting that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or OPEN SPACE around the perimeter of the site, near the proposed BUILDINGS, and within the parking LOT that promotes the highest possible aesthetic quality of the development.

G. Residential Performance Standards.

- (1) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve OPEN SPACE within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development, and coordinated with the Conservation Commission. This cost shall become the value at which DEVELOPMENT RIGHTS may be purchased.
- (2) Proceeds from the purchase of DEVELOPMENT RIGHTS, shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.
- (3) A residential TRANSFER OF DEVELOPMENT RIGHTS APPLICANT may pursue one of the following methods for TRANSFERING DEVELOPMENT RIGHTS.
 - (a) Single Family Detached method
 - i. An applicant shall develop a baseline yield for the lot to be developed, through the following formula
 - 1. The square footage of the parent lot minus unsuitable development areas is the base lot size.
 - 2. The base lot size is then reduced by fifteen (15) percent to account for roadway, this creates the net area.
 - 3. The net area is then multiplied by a factor determined by the amount of wetlands over the parent lot. This is the developable area.

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Percentage of Parcel that is unsuitable development area	Factor
0<10%	0.85
10<20%	0.8
20<30%	0.75
30%<	.7

4. The developable area is the divided by the minimum lot size, and the whole number value is the base number, with no rounding.
 - a. This base number is not required to be restricted by the requirements in subsection iii, unless the formula defined in item ii 1. is utilized.
5. The development plan shall be laid out in a design that meets the requirements for block length and cu de sac length.
- ii. The transfer shall equate to one of the following calculations:
 1. For construction of units no larger than six hundred (600) square feet of total living area, including the base calculated units, there shall be no density limit. The monthly cost of said units shall conform to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, and there shall be no TDR fee collected for said unit(s).
 2. For construction of units no larger than one thousand (1,000) square feet, of total living area, two (2) units per DEVELOPMENT RIGHT purchased shall be allowed.
 3. For construction of units no larger than fourteen hundred (1,400) square feet, of total living area, one (1) units per DEVELOPMENT RIGHT purchased shall be allowed. The unit count shall be the whole number value and not rounded up.
- iii. Total living area shall mean the size of the home (in square feet) based upon the exterior dimensions, excluding unconditioned spaces. The units created, through the transfer must be:
 1. Limited to the square footage originally constructed.
- iv. A note shall be placed on the approved plan and any Building Permit shall note the adherence to this section of the Code.
- v. A note shall be placed in the property/unit deed citing the restrictions listed above.
- vi. The plan shall be considered a subdivision application. Prior to submission, a determination by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations.

(b) Single Family, Two family, three family and 4 or more method

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- (i) The transfer may be through the purchase of development rights, as described in G) (1), or through the protection of land via a permanent conservation easement as per section E) (5).
 - a. In mixed use or multi-family zones, the base density shall be derived from the underlying zoning, and not through a formula.
 - b. If the additional unit(s) resulting from TDR are restricted so that the rent of said units conforms to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, there shall be no fee collected for said unit(s).
 - (ii) The transfer shall equate to one (1) unit per acre preserved, or purchased. If the end result is a village themed residential/nonresidential project, whereby 35% of the square footage being created is non-residential the transfer shall equate to one (1) unit per 2,500 square feet preserved or purchased.
 - (iii) Any development approved by the Planning Board after July 1, 2020, which will create a manufacturing or assembly facility over 40,000 square feet, may create and transfer one (1) unit per 2,000 square feet of building approved, above the 40,000 square foot base. The transfer shall not be completed prior to the issuance of the Certificate of Occupancy for the additional space.
 - a. If the units are to be placed upon the same lot, the layout must be shown on the site plan for the development.
 - (iv) The plan shall be treated as a site plan application, unless otherwise determined by the Director of Planning and Community Development, prior to final submission.
- (4) Regardless of the method utilized, the minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS.

MINIMUM BUILDING SETBACKS FOR SUBDIVISION LOTS		
Abutting A STREET	Abutting A Side LOT LINE	Abutting A Rear lot line

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the

20 feet	10 feet	30 feet
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 (5) Regardless of method utilized, the setbacks shall be:

(6) Regardless of the method utilized, the minimum FRONTAGE requirement may be waived by the PLANNING BOARD, to no less than forty feet (40'). Paved access to all developed areas shall be suitable for emergency vehicles.

(7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty (30) foot no cut, no disturb buffer.

(8) Regardless of the method utilized, any other provision in this Chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the TRANSFER OF DEVELOPMENT RIGHTS so long as the increase in density or intensity:

(a) Is consistent with the Master Plan

(b) Is not incompatible with the land uses on neighboring LOTS (eg a multifamily building in a single family neighborhood)

(c) Is created on property served by public water and sanitary sewer.

170-28. Urban Renewal District.

The regulatory provisions contained in the so-called "Land Use Provisions and Building Requirements" for the Downtown Dover Urban Renewal Project No.1 shall apply to the project area, as approved by the Dover City Council.

170-28.1. Riverfront Residential Overlay District. [Amended on 02-17-99 by Ord. No. 25-98.]

A. Purpose. The purpose of this section is to promote the public health, safety and general welfare by protecting the shorelands which are valuable and fragile natural resources essential to maintain the integrity of public waters. By adopting this section,

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the City is striving to avoid uncoordinated, unplanned and piecemeal development of shorelands which could significantly impact public waters.

- B. Location of District. The Riverfront Residential Overlay District is an overlay district that includes all land located within two hundred and fifty (250) feet of the reference line (as defined by RSA 483-B:4 – XVII) of any tidal water body or tidal river in a Single Family Residential District (R-12, R-20, and R-40).
- C. Minimum LOT Size Requirement. The minimum LOT size for a LOT within the Riverfront Residential Overlay District shall be three times the minimum LOT size required by Section 170-12 – Applicability of Table of Dimensional Regulations for the underlying zoning district, but land classified as wetlands can be included for up to fifty percent (50%) of the minimum LOT area required in this district.
- D. Minimum Shoreland FRONTAGE Requirement. Any new LOT created within the district shall provide a minimum of one hundred fifty (150) feet of river shoreland FRONTAGE per DWELLING UNIT for LOTs dependent on septic systems and a minimum of one hundred (100) feet of river shoreland FRONTAGE per DWELLING UNIT for LOTs served by municipal sewer.
- E. Existing LOTs. Existing LOTs of record are exempt from the provisions of this Chapter. Only LOTs subdivided after the posting of this Chapter shall be subject to its provisions.
- F. Other Provisions. Reference is hereby made to RSA 483-B, the Comprehensive Shoreland Protection Act, the provisions of which apply. It is intended that the more restrictive law shall apply. In all cases where the Riverfront Residential Overlay District is overlain other local zoning districts, the more restrictive regulations shall apply.

170-28.2 Residential-Commercial Mixed Use (RCM) Overlay District. [Amended on 01-22-2003 by Ord.35-02; Amended on 05-17-2006 by Ord. No. 03-06; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 09-13-2013 by Ord. No. 2013.08.14-12, Amended on 07-22-2020 by Ord. No. 2020.07.08.006, Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

A. Purpose and Intent

- (1) The Residential-Commercial Mixed Use Overlay District is designed as an overlay district that allows a mixture of residential use and commercial uses on one parcel. In order for a developer to utilize these regulations, the PLANNING BOARD shall have granted a Conditional Use permit. The district includes options which enable and encourage greater flexibility in the design of residential housing for older persons with commercial projects. The overlay permits development of large tracts of land on a Development Plan

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basis which allows flexibility in internal road design, with reduced dwelling LOT sizes and modified dimensional requirements.

- (2) The mixed residential and commercial uses are intended to be complementary of one another and to create a sense of community between the mixed uses. Housing and commercial uses can be developed to provide appropriate use of land, facilitate the economical and efficient provision of public services, promote OPEN SPACE conservation, protect the natural and scenic attributes of the land, and expand opportunities for the development of, outside the traditional residential developments.

B. Conditional Use Permit

- (1) Conditional use approval may be granted by the PLANNING BOARD (RSA 674:21 II) after proper public notice and public hearing provided that the proposed project complies with the following standards:
 - (a) The APPLICANT demonstrates that the development complies with the design guidelines that are outlined in Chapter 149 14.2, Site Review Regulations. These guidelines encourage a context sensitive development, which encourages components that act as one project and not as two adjacent projects
 - (b) The APPLICANT demonstrates that the development poses no detrimental effects on surrounding properties. Potential areas of impact that need to be analyzed include, but are not limited to, vehicular traffic, noise, property value, visual blight, natural resources degradation, light pollution, and offensive emissions such as dust, odor, or smoke.
 - (c) The APPLICANT shall submit a Fiscal Impact Analysis as defined in Chapter 155.22.C (1) (b) Subdivision of Land. The Analysis shall demonstrate that the project is at least a cost neutral project for the City at present and ten years from the occupation.
- (2) Conditional use approval shall be subject to a formal agreement between the PLANNING BOARD and the APPLICANT. Said agreement shall be recorded at the Strafford County Registry of Deeds.

C. Location

The Residential-Commercial Mixed Use Overlay District shall include any parcel located within the CM, IT or R-40 zone, which is greater than 25 acres, and served by public water and sanitary sewer.

D. Permitted Uses The following uses are permitted:

- (1) Principal Uses

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(a) Housing:

[1] SINGLE-FAMILY DWELLING

Including the use of MANUFACTURED HOUSING

[2] Two-family dwelling

[3] Three to Four family dwelling

[4] MULTI-FAMILY DWELLING

[5] MANUFACTURED HOUSING PARKS (permitted outright without a special exception)

(b) Public and private utilities

(c) Non-Residential uses as allowed as follows:

[1] Any use allowed in the underlying zone

[2] Barber or Beauty Shop

[3] Bank

[4] Eating/Drinking Establishments (no Drive thru Service)

[5] BED AND BREAKFAST

[6] OFFICE

[7] Retail store

[8] Theater

[9] ADULT DAY CARE

[10] NURSING HOMEs at a density of one bedroom per seventy-five hundred (7,500) square feet of land

[11] CONGREGATE CARE FACILITIES at a density of one unit per seventy-five hundred (7,500) square feet of land

[12] Other uses compatible with housing may be approved via Conditional Use, using the criteria in 170-20 B(2).

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[13] Non-residential uses in existence at the adoption of this ordinance on adjacent parcels shall be allowed to expand within the development if conceptually shown on the approved plan.

(2) ACCESSORY USEs

(a) Recreational facilities

(b) Community BUILDING

Defined as “A BUILDING used as a place of meeting, recreation or social activity typically for use by the residents of a particular development”.

(c) Maintenance BUILDINGs

(d) Rental and sales OFFICEs

E. Procedural Concepts

- (1) The developer shall prepare a Development Plan, which locates the proposed types of non-residential and residential development, utilities, access roads, and public ways. The parcels comprising the development may be under separate ownership, but shall be treated as one development and shall be bound by the approval granted for the entire Development Plan. If approval is granted, individual LOTs must be developed as part of the larger Development Plan and phasing outlined below, and not separately. The Development Plan must identify the percentage of the non-residential uses, residential uses and OPEN SPACE. Non-residential and/or mixed use uses must comprise at least fifty-five percent (55%) of the total proposed FLOOR AREA for the development; residential uses must not exceed forty-five percent (45%) of the total proposed FLOOR AREA for the development. Nonresidential uses within projects located in the CM district must be 90% manufacturing and assembly in nature. A BUILDING shall be considered “mixed use” provided that at least 50% of the FLOOR AREA of the first floor is reserved as commercial space and provided that such commercial space is located roughly in the front half of the BUILDING and extends the length of the BUILDING façade. Residential ACCESSORY USES (e.g. mechanical, storage, laundry, etc.) are permitted to be located within the back half of the first floor of any mixed use BUILDING.
- (2) A minimum of twenty percent (20%) of the area of the original tract shall be reserved as OPEN SPACE and identified as such on the Development Plan. Fifty percent (50%) of the required OPEN SPACE (as defined in Chapter 155-60) must be usable uplands and reasonably accessible to all property owners or lessees in the project. Any OPEN SPACE provided above twenty percent (20%) may be mixed unsuitable development areas and upland.

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- (3) Residential uses require that the calculation of permitted density shall be completed through the submission of a yield plan (as defined in Chapter 155-60, Subdivision of Land) applied to the Development LOT and not individually to the Internal Dwelling LOTs.
- (4) For residential development that includes single family homes over 1,001 square feet of total living area, , three (3) to four (4) family, density shall be based upon calculating one (1) unit per forty thousand (40,000) square feet of CONTIGUOUS upland, and using one hundred fifty (150) feet of FRONTAGE on a public roadway.
- (5) For single family residential homes 1,000 or less square feet of total living area, development, two family dwellings, or MULTI-FAMILY DWELLINGS-density shall be based upon calculating one unit per ten thousand (10,000) square feet of CONTIGUOUS upland, and using one hundred (100) feet of FRONTAGE on public a roadway.
 - a. If units are restricted so that the rent of said units conforms to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, there shall be no density for said unit(s).
- (6) The Development Plan may be phased for a term of five (5) years. The phasing plan shall contain provisions which promote the mixed use of the site consistent with Section 170-28.2.A. For the purposes of this section, development shall include:
 - (a) construction of STRUCTURES;
 - (b) environmental remediation;
 - (c) site preparation or demolition;
 - (d) roadway utility or recreation and common area design and construction; and
 - (e) bonding or other security for site development.
- (7) The phasing plan shall provide that no more than fifty percent (50%) of the residential development may be occupied prior to completion of between twenty-five percent (25%) and fifty percent (50%) of the non-residential STRUCTUREs as negotiated between the PLANNING BOARD and the Developer, and included in the Conditional Use Approval.
- (8) Provided that the developer is making reasonable efforts to develop the site, the PLANNING BOARD may extend the initial five (5) year phasing period provided a request for extension is submitted before the expiration of the initial five (5) year phasing term.
- (9) Residential Development Plan Guidelines
 - (a) The developer shall be permitted to allocate permitted density among Internal Dwelling LOTs in a flexible and creative manner. The sum total of the permitted density shall not exceed the permitted density of the Development LOT or Legal LOT, unless the additional density is derived from the Transfer of Development Rights Ordinance. Layouts may include individual LOTs or a cluster of units without LOT LINES.
 - (b) Dwelling layouts shall be so designed that parking is screened from external roadways by garages, BUILDING locations, grading or screening. Major topographical changes or removal of existing trees shall

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be avoided wherever possible, and water, wetlands, and other scenic views from the external **STREETs** shall be preserved as much as possible.

- (c) Where possible, it is desirable and encouraged to mix residential and non-residential uses. This may be achieved through situating the **BUILDINGs** close to each other, or though allowing **STRUCTUREs** to house residential – preferably on the second or above floor, with non-residential on the first floor. Creativity and flexibility is encouraged and the development plan may offer another option for mixing uses.
- (d) All residential development must adhere to architectural design guidelines. Said standards will reflect a New England village motif and include **STRUCTUREs** with peaked roofs, and architectural shingles. The guidelines for this development are included in Chapter 149, Section 14.2, Site Review Regulations.
- (e) All **MANUFACTURED HOMEs** shall adhere to the standards outlined in Chapter 126, **MANUFACTURED HOME PARKs**, with the exception of Sections 126-3, 126-4, 126-5, 126-6, and 126-7.H which shall be controlled by the provisions hereof and unless noted below. Where there is a difference in the requirements between this Overlay District and the provisions of Chapter 126, “**MANUFACTURED HOME PARKs**”, the provisions of the Overlay District shall apply.

(10) Nonresidential Development Plan Guidelines

- (a) The general character of the nonresidential **STRUCTUREs** within the development **LOT** is intended to be a pedestrian friendly setting, with emphasis on the natural characteristics of the site. The site design should create a sense of character and cohesiveness through landscaping, façade treatment, and **SIGNAGE**.
- (b) The guidelines for this development are included in Chapter 149, section 14.2, Site Review Regulations.

F. Standards and Regulations

(1) Internal Roads

As part of the approval of the Conditional Use permit, the **PLANNING BOARD** shall determine whether internal roads shall be public or private. If a road is determined to be private, no municipal services shall be provided other than public safety, utilities maintenance, and regulatory services. Unless noted below roadways shall conform to the **STREET** design criteria laid out in the Code:

(a) Minimum Internal R.O.W.

- [1] Maximum residential: 35 feet
- [2] Maximum non- residential: 50 feet

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(b) Minimum Pavement Width

- [1] Minimum residential: 20 feet
- [2] Minimum non- residential: 28 feet
- [3] Minimum SIDEWALK pavement width: 5 feet
- [4] Minimum bike/Segway/golfcart path width: 5 feet

(c) Minimum Tangent Length at Intersections = 75 feet

(d) Maximum STREET angle at Intersections = 60 degrees

(e) Minimum centerline radius = 100 feet

(f) Minimum Tangent Length between reverse curves = 50 feet

(2) Dimensional Requirements

(a) Non-residential/Mixed-Use BUILDINGs

[1] Minimum STRUCTURE SETBACK from external LOT LINE:
50 feet

Expanding existing non-residential uses are not held to this SETBACK.

[2] Minimum STRUCTURE SETBACK from external

ROW: 50 feet

[3] Maximum non-residential BUILDING HEIGHT: 55 feet

[4] For all other dimensional requirements for non-residential STRUCTUREs and parking SETBACKs refer to the underlying zone.

(b) Residential Dwellings:

[1] Minimum STRUCTURE and parking SETBACK

from external LOT LINE: 50 feet

[2] Minimum STRUCTURE and parking SETBACK

from external ROW: 100 feet

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- [3] Maximum residential BUILDING HEIGHT: 35 feet
- [4] Minimum FRONTAGE on internal road: 40 feet
- [5] Minimum SETBACKS:
 - a. FRONT YARD SETBACKS: 20 feet
 - b. Distance between BUILDINGS: 24 feet
 - c. There shall be no minimum lot size or frontage for internal lots created.

(3) Parking

- (a) All DWELLING UNITS shall require two independently accessible PARKING SPACES per unit, except that the CONGREGATE CARE and NURSING HOME requirements shall be as otherwise defined by the Zoning Chapter. Non-residential uses shall comply with parking requirements defined by the Zoning Chapter.
- (b) Overnight parking shall not be permitted on internal roadways.
- (c) Parking shall be utilized and available to all components of the Development Plan, through the recording of access and parking easements.

170-28.3. Groundwater Protection. [Amended on 6-12-85 by Ord. No. 7-85; Amended on 1-30-88 by Ord. No. 24-88; Amended on 02-17-99 by Ord. No. 25-98; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15, Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

- A. Purpose. The purpose of this Section is to promote the public health, safety and general welfare by protecting and preserving the quality of existing and future groundwater supplies from adverse or detrimental land use, development or activities.
- B. Location. These regulations shall apply to all lands within the Primary and Secondary Groundwater Protection Zones. The boundaries of the Primary and Secondary Groundwater Protection Zones are depicted on maps entitled "Groundwater Protection Zones," dated October 6, 1998. These maps shall be on file at the Planning and Community Development Department and the City Clerk's Office.
- C. Applicability.
 - (1) All land use activities and development conducted within the Primary or Secondary Groundwater Protection Zones shall be regulated by the standards established herein.

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- (2) The standards established herein shall constitute the rules of an overlay zone and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other ordinance or regulation, the more restrictive requirement shall control.
- (3) Pursuant to New Hampshire Code of Administration Rules Part Env-Wq 401, land use activities within a four-hundred-foot radius of a municipal well, the Primary Groundwater Protection Zone, shall be subjected to more restrictive standards than the balance of the Groundwater Protection Zones.
- (4) Any NONCONFORMING USE may continue, and may be maintained and repaired, unless such use is determined to be an imminent hazard to public health and safety by the City Council or the Health Officer.

D. Standards and regulations.

- (1) The following land uses are allowed in the Primary Groundwater Protection Zones. All other land uses are prohibited:
 - (a) Construction, operation, and maintenance of wells, dams and water conservation apparatus.
 - (b) Conservation, education and recreational activities which do not cause erosion or necessitate the application of chemicals.
 - (c) Forestry and agricultural uses, provided that fertilizers, herbicides, pesticides, manure and other leachables are not used or stored within said zone.
 - (d) Maintenance and repair of any existing STRUCTURE, provided that there is no increase in the area of impermeable surfaces.
- (2) The following land uses are expressly prohibited from the Secondary Groundwater Protection Zones:
 - (a) Disposal or storage of solid waste that contains leachable toxic substances, except for temporary storage awaiting removal, provided that it is stored in a manner that avoids leaching and runoff.
 - (b) Disposal or storage of liquid waste, except for normal sanitary waste disposal from a domestic septic system approved in compliance with New Hampshire Department of Environmental Services (NHDES) Regulations, which may require a groundwater discharge permit under RSA 485-A:13. Land

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application of wastewater residuals (sewage sludge) subject to regulation under NHDES Rules Env 800-811 is prohibited.

- (c) All on-site handling, disposal, storage or recycling of solid or liquid waste and hazardous or toxic materials, as defined in RSA 174A, except for the temporary storage of such materials when they are incidental to or byproducts of a manufacturing process. Such materials are to be stored and removed in accordance with Chapter 149, Site Review Regulations, and other applicable state and federal regulations.
 - (d) JUNKYARD - or salvage yard.
 - (e) Motor vehicle service or repair shops, except as a customary ACCESSORY USE designed to provide routine service to the vehicles operated by the principal use.
 - (f) Storage of petroleum or related products, exempting such products when they are a part of Subsection D.(2) (c) or (e) above and exempting normal heating oil. Notwithstanding, the facilities for storing and handling such products shall be designed to avoid groundwater contamination and shall be proposed for review and approval prior to construction.
 - (g) Storage of road salt and other deicers, except in a shelter constructed to avoid leaching and runoff for use on-site.
 - (h) The dumping of snow containing road salt or other deicers brought in from outside the Groundwater Protection Zone.
 - (i) Industrial uses that discharge contaminated wastewater on-site.
 - (j) Animal feedlots.
 - (k) Commercial storage of manure, fertilizers, herbicides, pesticides or other leachables, except for the temporary storage of such material when it is incidental to the principal use and stored in a manner that avoids leaching and runoff.
 - (l) The use of wood piling treated with creosote or other preservative.
- (3) The following land uses are allowed in the Secondary Groundwater Protection Zones only if the PLANNING BOARD approves a Conditional Use Permit for the specific use per Chapter 170-28.E.(4):
- (a) General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing;

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- appliance and small engine repair; boat repair, service and refinishing; refrigeration, heating, ventilating and air conditioning shops.
- (b) Metalworking shops, including, but not limited to: machine shops; metal plating shops; heat treating shops; smelting shops; and jewelry making shops.
 - (c) Manufacturing facilities, including but not limited to: electronics and chemical manufacturing, processing, and RECLAMATION; paper, leather, plastic, fiberglass, rubber, silicon and glass making; pharmaceutical production; pesticide manufacturing; and chemical preservation of wood and wood products.
 - (d) Laboratories and professional medical OFFICES, including but not limited to: medical, dental, and veterinary OFFICES; and research and analytical laboratories
 - (e) Cleaning services, including but not limited to: dry cleaner; laundromats; beauty salons; and car washes.
- (4) The following land uses are allowed in the Secondary Groundwater Protection Zones:
- (a) Construction, operation and maintenance of wells, dams, and water conservation apparatus
 - (b) Conservation, education and recreational activities which do not cause erosion or necessitate the application of chemicals.
 - (c) Forestry and agricultural uses, provided that fertilizers, herbicides, pesticides, manure and other leachables are not commercially stored within said zone.
 - (d) All land use permitted in the applicable underlying zoning district, provided that they are not expressly prohibited in Subsection D.(2) or (3) above.
- (5) In soils that are excessively drained, well-drained, moderately well-drained or somewhat poorly drained, as defined by a site specific soil survey completed in accordance with the standards of the Society of Soil Scientists of Northern New England, the development shall not make impervious to water more than twenty percent (20%) of the area of said soils except as provided for below. Any development in the Secondary Groundwater Protection Zone that proposes a total impervious surface greater than twenty percent (20%) shall only be permitted if the PLANNING BOARD grants a Conditional Use Permit, per Chapter 170-28.E (4). In reviewing a Conditional Use Permit application filed under this provision, the PLANNING BOARD shall require that the proposed development plan

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incorporates a stormwater drainage plan, approved by the PLANNING BOARD and prepared by a professional engineer certified to practice in the State of New Hampshire. The plan shall provide for the retention and percolation within the Secondary

Groundwater Protection Zone of all development-generated stormwater runoff from a ten (10) year storm. Furthermore, the stormwater drainage plan shall provide for the removal of oil and gasoline from parking LOT runoff by use of treatment swales, oil/gas separators or other device, prior to retention and percolation of the runoff.

- (6) In addition to standards and requirements contained in other ordinances and regulations, a proposed site plan and BUILDING permit application shall be accompanied by a report that specifies the amount and composition of industrial or commercial waste that will be generated on-site and details the proposed method for disposal of such waste outside of the Groundwater Protection Zones.
- (7) A hydrogeologic study may be required by the PLANNING BOARD to investigate the impacts a proposed development or land use activity will have on an existing or future groundwater supply. A qualified professional hydrologist or geologist shall be chosen from a list of such professionals provided by the City of Dover, and the APPLICANT shall pay any costs incurred.

E. Administration.

- (1) Development or land use activities proposed within the Groundwater Protection Zones that require subdivision or site plan approval from the PLANNING BOARD also shall be reviewed by the Dover Conservation Commission. The PLANNING BOARD and Conservation Commission shall verify that the proposed activity will comply with this Chapter before the PLANNING BOARD grants approval.
- (2) The Building Inspector shall not issue a BUILDING permit for development or land use activities until such time as he verifies with the Zoning Administrator that the proposed development will comply with the provisions and standards established herein. The Building Inspector may consult with the Conservation Commission or Planning and Community Development Department as he deems necessary.
- (3) Land use activities that do not require PLANNING BOARD approval or BUILDING permits are also subject to the requirements and standards established herein.

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- (4) Conditional use permits. The PLANNING BOARD, after receiving a recommendation from the Conservation Commission, may vary the provisions herein by granting a conditional use permit in accordance with RSA 674:21. Along with the conditional use permit application, the APPLICANT shall submit expert technical information from a professional engineer, hydrologist or geologist that documents that the requested relief is consistent with the stated purpose and intent of this Chapter. Such technical information shall include an environmental protection plan consistent with the regulated substance management requirements of the NHDES's, "Best Management Practices for Groundwater Source Protection" (Part Env-Wq 401). Said plan shall also include provisions for routine monitoring and reporting of environmental protection activities to be reported to the City of Dover. Any cost incurred by the city in reviewing the groundwater protection information shall be paid by the APPLICANT for the conditional use application.

F. Performance Standards

- (1) Applicability. Within the Primary and Secondary Groundwater Protection Zones, the following performance standards shall apply to
- (a) all new non-residential and multi-family development,
 - (b) Expansion of pre-existing non-residential and multi-family developments that expands the LOT COVERAGE of the existing STRUCTURE(s) by more than twenty percent (20%), and
 - (c) all subdivisions of four or more new LOTs:
 - (i) Post-development infiltration volumes shall be no greater than pre-development volumes as determined by use of the Development Review Model described in Section G, below.
 - (ii) Stormwater shall be treated by use of a stormwater treatment system designed to remove no less than eighty percent (80%) of the annual load of total suspended solids. The removal rate shall be accomplished using best management practices installed in advance of the final infiltration system.
 - (iii) No stormwater infiltration system shall be located within the two hundred (200) day travel time of an existing or proposed municipal well as depicted on the map referenced in Section 170-28.3.B, above. In absence of a defined two hundred (200) day travel time radius, the APPLICANT shall submit a technical evaluation from a professional engineer,

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hydrologist or geologist that documents that the proposed discharge is consistent with the stated purpose and intent of this requirement.

(2) Specific Requirements. Within the Primary and Secondary Groundwater Protection Zones, the following performance standards shall apply to specific activities which may impact the groundwater quality:

- (a) Sand and gravel extraction operations shall not excavate below an elevation four (4) feet above the seasonal high water table observed when the associated water supply well has not been operating for at least two (2) weeks prior to the date of measurement. The operator of the sand and gravel extraction operation shall prepare for the City an annual report documenting compliance with the requirements of this section. Pursuant to RSA 155-E:11, II the requirements of this section may be waived if the APPLICANT demonstrates that such EXCAVATION will not adversely affect water quality and that written notice of such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.

- (b) Pursuant to Chapter 109-27, Fire Prevention and Life Safety, on-premise use heating oil tank facilities shall comply with the provisions of the National Fire Protection Association Standard NFPA 31, "Installation of Oil-Burning Equipment".

G. Development Review

All developments to which Section F Performance Standards, above, applies shall complete the calculations as specified in the Development Review Model, or a performance equivalent, incorporated herein by reference. A copy of this model shall be on file at the Planning and Community Development Department and the City Clerk's Office. The Building Inspector shall withhold a BUILDING permit until such time as he/she verifies that the proposed development will comply with the infiltration and nitrogen maximums set forth in Table 1, Sections A and B of said Development Review Model.

170-28.4. Scenic Road Overlay District. [Amended on 01-22-2003 by Ord. No. 35-02.]

- A. Purpose. The purpose of this section is to promote the protection of natural woodlands located adjacent to the public right-of-ways of scenic roads as designated by the Dover City Council per the authority granted by Chapter 143, Scenic Roads. By adopting this section, the City is striving to maintain the scenic qualities of scenic roads both within the public right-of-way and in the privately-owned land adjacent to the scenic roads.

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- B. Location of District. The Scenic Road Overlay District is an overlay district that includes all land located within twenty-five (25) feet of the right-of-way of a scenic road, as designated by the City Council. At present the following roads have been designated as scenic roads: Old Garrison Road, David Tuttle Road and Rochester Neck Road.
- C. Buffer Requirements. Within the Scenic Road Overlay District, the natural vegetative buffer, existing at the time of the adoption of this section, shall be maintained and preserved in its natural state, except as provided below:
 - (1) The removal of damaged, diseased or unsafe vegetation is permitted within the overlay district upon the approval of the City Arborist.
 - (2) The clearing of vegetation necessary for the construction of a driveway for access to a LOT is permitted. Such driveway shall be designed to minimize the amount of clearing of vegetation necessary.
 - (3) The clearing of vegetation for agricultural uses, as defined by RSA 21:34 is permitted.
- D. Compliance with Other Requirements. Nothing in this section shall relieve the property owner from complying with the provisions of, Chapter 143, Scenic Roads.

170-28.5. Hazardous Waste Landfill District I. [Amended on 5-13-87 by Ord. No. 9-87.]

- A. Purpose. In the interest of responsible planning, public safety and concern for the general welfare of the citizens of Dover, the regulations of this district are designed to alert the public and prohibit development activities in areas potentially affected by the storage of hazardous waste until such time as a final cleanup and proper closure of the site can be completed.
- B. Location. The Hazardous Waste Landfill District I is hereby to consist of those City owned LOTs shown on the City of Dover's Assessor's Map C, LOT Nos. 16, 18 and 24.
- C. Hazardous Waste Landfill District I criteria. All applications for further development, residential or commercial or industrial, in areas heretofore specified must contain a notation on the PLAT, site plan and application stating that the development site is within the Hazardous Waste Landfill District.

ARTICLE VIX

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EXCAVATIONS

[Amended on 6-10-87 by Ord. No. 13-87; Amended on 09-17-2003 by Ord. No. 18-03.]

170-29. Authority.

RSA 155-E stipulates that, with some exceptions, all EARTH EXCAVATIONS in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority vested in the PLANNING BOARD by the Code and RSA 155-E, the City adopts the following regulations to govern the EXCAVATION of EARTH materials in the City of Dover.

170-29.1. Purpose and Intent.

The goals of this regulation are to: provide for reasonable opportunities for EXCAVATION; minimize safety hazards which can be created by open EXCAVATIONS; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and maintain the aesthetic features of the City. For the purpose of achieving these goals, no EARTH materials in the City shall be removed except in conformance with these regulations.

170-29.2. Reserved.

170-29.3. Applicability.

A. Projects Requiring a Permit

- (1) Those that commenced operations since August 24, 1979 without first obtaining a permit, unless specifically exempted by Section 170-29.3.B below.
- (2) Any EXCAVATION proposing to begin operation after the effective date of these regulations.
- (3) Those that have lawfully operated prior to August 24, 1979 and wish to expand the EXCAVATION AREA.
- (4) Those EXCAVATIONS from an area that on August 4, 1989 was CONTIGUOUS to or was CONTIGUOUS land in common ownership with stationary manufacturing and processing plants that were in operation as of August 24, 1979 and wish to expand.

B. Projects Exempt From a Permit

- (1) The following projects do not require a permit, but are nevertheless subject to Sections 170-29.7, 170-29.8, and 170-29.9. In the event of a question regarding compliance, the PLANNING BOARD may require the owner/operator to come

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before the PLANNING BOARD and submit such information as may be necessary to demonstrate compliance with said standards.

- (a) EXISTING EXCAVATIONS that lawfully existed as of August 24, 1979 from which EARTH materials of sufficient weight and volume to be commercially useful has been removed during the two (2) year period before August 24, 1979, provided that:
 - (i) At the time operation began it was in compliance with any local ordinances that may have been in effect;
 - (ii) The owner or operator of such an EXCAVATION AREA shall have filed an EXCAVATION report per RSA 155-E: I (d) with the PLANNING BOARD no later than August 4, 1991. Any EXISTING EXCAVATION that failed to file this report shall no longer be considered to be grandfathered and must obtain a permit from the PLANNING BOARD before continuing EXCAVATION of the site.
- (2) The following projects do not require a permit, but are nevertheless subject to Sections 170-29.7, 170-29.8, and 170-29.9 of these regulations. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur only after the PLANNING BOARD has given written notice that the EXCAVATION is not in compliance and the owner has failed to bring it into compliance within thirty (30) days of receipt of such notice.
 - (a) EXCAVATIONS from a site that on August 4, 1989 was CONTIGUOUS to or was CONTIGUOUS land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979 and which use EARTH obtained from such EXCAVATION SITE.
 - (b) EXCAVATIONS from a site that on August 4, 1989 was CONTIGUOUS to, or was CONTIGUOUS land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979 and before August 4, 1989, which used EARTH obtained from such site.
 - (c) An EXCAVATION performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway. A copy of the pit agreement executed between the pit owner, the agent, and the governmental unit shall be filed with the PLANNING BOARD prior to the start of EXCAVATION. In addition, the provisions of Section 170-29.5 of this Chapter and the provisions of RSA 155-E:2, IV, (b) and (c) shall be complied with.

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- (3) The following projects are exempt from a permit and are not subject to regulation by the PLANNING BOARD:
- (a) EXCAVATION that is exclusively incidental to the lawful construction or ALTERATIONS of a BUILDING or STRUCTURE, a parking LOT or way including a driveway on a portion of the premises where removal occurs. This EXCAVATION cannot be started, however, until all required state and local permits have been issued.
 - (b) EXCAVATION that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment. In the event of questions, the Zoning Administrator shall determine what is incidental in accordance with RSA 21:34-a.
 - (c) EXCAVATION from a granite quarry for the purpose of producing DIMENSION STONE, if such EXCAVATION requires a permit under RSA 12-E (Mining and RECLAMATION).
- (4) A person owning land abutting a site that was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile EARTH taken from the construction site and may remove the EARTH at a later date after written notification to the City Engineer and Zoning Administrator.

170-29.4. Abandoned EXCAVATIONS.

- A. Any EXCAVATION, except for those associated with STATIONARY MANUFACTURING PLANTS, whether subject to a permit under these regulations or not, for which the affected area has not yet been brought into complete compliance with the RECLAMATION standards of this regulation shall be considered abandoned if:
- (1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any two (2) year period either before, on, or after August 4, 1989. The time period may be extended if, prior to the end of the time period, the PLANNING BOARD approves a RECLAMATION timetable, and a bond or other surety is posted in a form and amount prescribed by the City Engineer sufficient to cover the costs of reclaiming the entire site, however, in no case shall the incremental bond amount be less than two thousand five hundred dollars (\$2,500.00)/acre.
 - (2) The EXCAVATION SITE is in use and is not an EXCAVATION associated with STATIONARY MANUFACTURING PLANTS, but either has not been brought into compliance with the incremental RECLAMATION standards of this

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regulation, or a bond has not been posted and the PLANNING BOARD has not approved a RECLAMATION timetable.

- (3) The owner or operator of the EXCAVATION has neither secured a permit pursuant to these regulations nor filed an EXCAVATION report with the PLANNING BOARD within the prescribed period.

- B. In the event the Zoning Administrator determines that any abandoned EXCAVATION presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete RECLAMATION within a reasonable period of time. Should RECLAMATION not be completed, the PLANNING BOARD may request the City to authorize RECLAMATION at the City's expense. The City's costs shall constitute an ASSESSMENT against the owner, and shall create a lien against the property on which the EXCAVATION is located. Such ASSESSMENT and lien may be enforced and collected in the same manner as provided for real estate taxes.
- C. The provisions of 170-29.4.B above also apply to any EXCAVATION that ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the RECLAMATION standards, if the Zoning Administrator determines in writing that specified RECLAMATION measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

170-29.5. Prohibited Projects.

The PLANNING BOARD shall not grant a permit:

- A. Where the project cannot comply with the requirements of Sections 170-29.7, 170-29.8 and 170-29.9.
- B. For EXCAVATIONS within fifty (50) feet of the boundary of a disapproving ABUTTER or within ten (10) feet of an approving ABUTTER unless approval is requested by said ABUTTER.
- C. Where the EXCAVATION is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for EXCAVATION exist in the City, as described in RSA 155-E: 4, III.
- D. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- E. Where existing visual barriers would be removed, except to provide access to the EXCAVATION.

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- F. Where the EXCAVATION would substantially damage a known aquifer, as designated by the United States Geological Survey.
- G. When the EXCAVATION cannot receive required necessary approvals from state or federal agencies, such as ALTERATIONS of Terrain or Wetlands permits.

170-29.6. Criteria For Non-conforming EXPANSIONS [Amended on 07-22-2020 by Ord. No. 2020.07.08.006].

EXPANSION of EXISTING EXCAVATIONS located in an area in which EXCAVATIONS are no longer permitted by zoning that was in effect on August 4, 1989 may be restricted or modified with conditions by the PLANNING BOARD, if after notice to the owner and a public hearing, the PLANNING BOARD finds that the EXPANSION will have a substantially different and adverse impact on the NEIGHBORHOOD. Impacts will vary depending upon the particular NEIGHBORHOOD; nevertheless, the following criteria will be taken into consideration:

- A. The EXCAVATION will not cause a diminution in area property values or unreasonably change the character of the NEIGHBORHOOD.
- B. The EXCAVATION will not create any NUISANCE or create health or safety hazards.
- C. The EXCAVATION will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

170-29.7. Operational Standards. [Amended on 07-22-2020 by Ord. No. 2020.07.08.006.]

For EXCAVATIONS not requiring a permit, the following standards apply. For those EXCAVATIONS requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the PLANNING BOARD.

- A. No EXCAVATION shall be permitted within fifty (50) feet of the boundary of a disapproving ABUTTER, within one hundred fifty (150) feet of a dwelling that either existed or for which a BUILDING permit has been issued at the time the EXCAVATION is commenced.
- B. No EXCAVATION shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such EXCAVATION is for the purpose of said highway.
- C. Vegetation or suitable BERM or combination of both shall be maintained or provided within the peripheral areas of items (1) and (2) of this section.
- D. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials.

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- E. Where temporary SLOPES will exceed a one to one (1:1) grade, a FENCE or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
- F. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
- G. EXCAVATION practices that result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.
- H. No EXCAVATION shall be permitted within one hundred (100) feet of any great pond, navigable river, or any other standing body of water ten (10) acres or more in area, or within fifty (50) feet of any other stream, river or brook which normally flows throughout the year, or any naturally-occurring standing body of water less than ten (10) acres, prime wetland as designated in accordance with RSA 482-A: 15, I or any other wetland area as defined by the Department of Environmental Services (DES) and, Chapter 170, Zoning, Article VII, 170-27.1.C.
- I. Sand and gravel extraction operations shall not excavate below an elevation four (4) feet above the seasonal high water table observed when the associated water supply well has not been operating for at least two (2) weeks prior to the date of measurement. Refer to section 170-28.3, Groundwater Protection, for monitoring report requirements.

170-29.8. Site RECLAMATION Standards.

- A. For EXCAVATIONS not requiring a permit, the following standards apply. For EXCAVATIONS requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the PLANNING BOARD.
- B. Within twelve (12) months following the expiration date of a permit issued under these regulations, or the completion of any EXCAVATION with the exception of agricultural activities, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:
 - (1) Except for exposed rock ledge, all disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
 - (2) All EARTH and vegetative debris resulting from the EXCAVATION shall be removed or otherwise lawfully disposed of.

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- (3) All SLOPEs, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the PLANNING BOARD. Changes of SLOPE shall not be abrupt, but shall blend with the surrounding terrain.
- (4) Any standing bodies of water created by the EXCAVATION that is judged to constitute a hazard to health and safety shall be eliminated.
- (5) The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For EXCAVATION projects requiring a permit from the Division of Water Supply and Pollution Control, the provisions of RSA 485-A:17 shall supersede this regulation. Copies of all local, state and federal required permits shall be filed with the Planning and Community Development Department.

170-29.9. Incremental RECLAMATION.

Except for EXCAVATION SITES operating STATIONARY MANUFACTURING PLANTS, any excavated area of five (5) CONTIGUOUS acres or more which is depleted of commercial EARTH materials, excluding bedrock, or any EXCAVATION operation from which EARTH materials of sufficient weight or volume to be commercially useful have not been removed for a two (2) year period, shall be reclaimed in accordance with Section 170-29.8. within twelve (12) months following such depletion or non-use, regardless of whether other EXCAVATION is occurring on adjacent land in CONTIGUOUS ownership. A RECLAMATION plan, including a RECLAMATION timetable for the depleted areas within the RECLAMATION site, shall be submitted to the PLANNING BOARD for review and approval by each operator, other than the operators of STATIONARY MANUFACTURING PLANTS that are exempt from permit requirements.

170-30. Performance Guarantee.

- A. Prior to the granting of any permit or to the removal of topsoil or other overburden material from a new area within an EXISTING EXCAVATION SITE, the APPLICANT shall submit to the Planning and Community Development Department a bond with sufficient surety as determined by the City Engineer. In no case shall the incremental bond amount be less than two thousand five hundred dollars (\$2500.00)/acre. The purposes of the bond are to guarantee RECLAMATION of the area, compliance with the permit, and to defray costs of any inspections. OFF-SITE IMPROVEMENTS for potential damage of City STREETS or facilities caused by the transportation of EARTH materials shall be discussed at this stage.
- B. The surety may be in the form of a performance bond, property escrow, irrevocable letter of credit, or any other form approved by the PLANNING BOARD. The surety

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may be phased to coincide with the phasing of work, in an amount sufficient to guarantee RECLAMATION of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the City Engineer is satisfied that all conditions of the site RECLAMATION plan have been complied with.

170-30.1. Waivers.

Due to the diverse nature of EXCAVATION operations that vary in scale and scope, and due to the varying conditions of the land to be excavated, the PLANNING BOARD may, upon application and following a duly-noticed hearing, grant any waiver in writing to the standards contained in Sections 170-29.7, 170-29.8, 170-29.9, and 170-30. for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

170-30.2. Application Procedures.

Prior to the PLANNING BOARD rendering a decision for an EXCAVATION permit, a public hearing shall be held, with due notification of all ABUTTERS and the public. The procedure for holding these public hearings is as follows:

A. Filing of the Application

- (1) Applications for new EXCAVATION permits shall be filed with the Planning and Community Development Department by April 1st. Applications to renew EXCAVATION permits shall be due by April 1st once every two (2) years. Applications to renew shall be due by April 1st of the renewal year. EXCAVATIONS operating within the Primary and Secondary Groundwater Protection Zones must still comply with the annual reporting requirements set forth in Section 170-28.3.F.(2)(a).
- (2) The application will be reviewed with the APPLICANT upon submittal to the Planning and Community Development Department, and will be accepted only if it is found to meet all submission requirements for a completed application. The application must be accepted as complete no later than April 15th in order to be scheduled for a public hearing. If the application is not completed by the deadline, then another meeting may be scheduled, but may not be later than the expiration date of the permit. All operations shall cease upon permit expiration until a new hearing is scheduled and a completed application is approved.

B. Board Action on Application

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- (1) At the PLANNING BOARD's first meeting date in May, the PLANNING BOARD may vote to accept the application, and if accepted, will schedule a public hearing to be held within thirty (30) days.
- (2) Within twenty (20) days of the close of the hearing on the application, or any continuation thereof, the PLANNING BOARD shall make a decision. The Board may for good cause with proper notice, accept the application, hold the public hearing, and make a decision during the same meeting. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Planning and Community Development Department within seventy two (72) hours.
- (3) The APPLICANT shall receive a written copy of the minutes along with the decision. In the event the application is disapproved, the reasons for the disapproval shall be given.

C. Notices Required for Public Hearing

- (1) All ABUTTERS will be notified by Verified Mail, not less than fourteen (14) days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of ABUTTERS must be taken from City records not more than five (5) days before filing the application.
- (2) Public notice will appear in a newspaper of general circulation and in at least three public places not less than fourteen (14) days prior to the meeting.
- (3) The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.

D. Fees

- (1) A filing fee as contained within the Fee Schedule plus ABUTTER notification postage shall be paid upon submission of an application, to defray the costs of posting notice for the public hearing. Failure to pay such cost shall constitute grounds for the PLANNING BOARD to not accept the application.
- (2) A permit fee as contained within the Fee Schedule shall be paid upon the issuance of a permit, to defray the costs of permit compliance.
- (3) A fee payable to the Strafford County Register of Deeds (SCRD) shall be paid upon approval, for the filing of any new plan, if so required by the PLANNING BOARD.
- (4) Additional reasonable fees shall be charged should the PLANNING BOARD require the advice of an engineer or other expert to review plans or inspect the site to determine permit compliance.

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170-30.3. Application Submission Items. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

The APPLICANT shall submit at least fifteen (15) copies of an EXCAVATION and a RECLAMATION Plan; one (1) additional copy shall be sent to the Conservation Commission. The plans shall be at a scale appropriate for the land area involved. The PLANNING BOARD may, upon good cause shown, waive any of the items in Paragraphs A or B below.

A. EXCAVATION Plan

The EXCAVATION plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. The plan shall show or be accompanied by the following items:

- (1) Name and address of the owner, the excavator (if different) and all ABUTTERS.
- (2) Name, address, and Signature with professional stamp of the person preparing the plan; date, bar scale and north arrow.
- (3) Zoning district boundaries of the proposed area and within two hundred (200) feet of the boundary of the project.
- (4) Sketch and description of the location and boundaries of the proposed and any EXISTING EXCAVATIONS; including the area in square feet and acre.
- (5) The location of existing BUILDINGS, STRUCTURES, septic systems and wells within two hundred (200) feet of the boundary.
- (6) Public STREETS, driveways, intersections, rights-of-way, and all easements within two hundred (200) feet; road network to be affected; intended transportation routes to be used.
- (7) Topography at contour intervals of five (5) feet or less.
- (8) All surface drainage patterns including wetlands and standing water.
- (9) Sketch and description of existing and proposed access roads, including width and surface materials.
- (10) The breadth, depth and SLOPE of the proposed EXCAVATION and the estimated duration of the project.
- (11) The elevation of the highest annual average ground water table within or next to the proposed EXCAVATION. Refer to Zoning Section 170-28.3., Groundwater

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Protection, for requirements of the annual report documenting compliance with the four (4) foot buffer rule.

- (12) Test pits that extend to either the seasonal high water table, ledge, or a minimum of six (6) feet below the maximum proposed EXCAVATION depth, including location and soils data; boring logs may be submitted separately.
- (13) Proposed fencing, buffers or other visual barriers, including HEIGHT and materials.
- (14) All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.
- (15) Plans for storm water management.
- (16) Plans for storage, use, and disposal of petroleum products and other regulated materials.
- (17) Methods to prevent materials from the site from being tracked onto public roadways.
- (18) Copies of all necessary state and federal permits.
- (19) All infrastructure and topographic information shall be submitted in an electronic format, as well as on paper.

B. RECLAMATION Plan

The RECLAMATION plan shall address the effects of the proposed EXCAVATION on soil, surface and groundwater, vegetation, overburden, topography, and fill material, and should address future land use consistent with the City's Master Plan.

The plan shall show or be accompanied by the following items:

- (1) Name, address, and signature with professional stamp of the person preparing the plan; date, bar scale and north arrow.
- (2) All boundaries of the area proposed for RECLAMATION and the land within two hundred (200) feet of the boundary of this site.
- (3) Final topography of the area proposed for RECLAMATION, at contour intervals of five (5) feet or less.
- (4) Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
- (5) Timetable as to fully depleted sites within the EXCAVATION AREA.

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- (6) Schedule of final RECLAMATION activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.

C. Other Information

The PLANNING BOARD reserves the right, per RSA 155-E:3,VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the PLANNING BOARD by RSA 676:4,I (g), any reasonable expenses incurred for such information or reviews shall be charged to the APPLICANT. Failure to pay such costs constitutes valid grounds for the PLANNING BOARD to deny the application. The following items shall accompany the application:

- (1) An annual report documenting compliance with the requirements of Section 170-28.3, Groundwater Protection. Pursuant to RSA 155-E:11, the requirements of this section may be waived if the APPLICANT demonstrates that such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.
- (2) A written statement from the Tax Collector that all current property and EXCAVATION taxes levied against all properties in the operation have been paid in full and that there are no unreleased tax liens encumbering said properties
- (3) A copy of the Notice of Intent to Excavate filed with the Assessor's Office.
- (4) A copy of the surety bond or other form of performance guaranty as approved by the PLANNING BOARD.

170-30.4. Administration and Enforcement.

A. Permits

- (1) Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the PLANNING BOARD. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- (2) A permit shall be valid for two (2) years and the expiration date shall be May 30th.
- (3) Failure to file for a permit shall be considered a violation and operators who fail to file will be issued a cease and desist order by the Zoning Administrator.
- (4) The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.

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(5) All permitted sites shall be inspected once every two (2) years. Inspections by the Zoning Administrator or their designee shall be scheduled in April to coincide with permit renewal applications and in October each year by the Zoning Administrator or his designee. The inspection reports shall be timely submitted to the PLANNING BOARD for their review.

B. Amendments and Renewals

Permit holders wishing to ALTER the size or location of the EXCAVATION, the rate of removal or the plan for RECLAMATION shall apply for a renewal or amendment; following the same procedures as those required for the original EXCAVATION permit.

C. Inspections

The Zoning Administrator or his designee may make periodic inspections of all EXCAVATION SITES to determine if the operations are in conformance with these regulations and the approved plans.

D. SUSPENSIONs and REVOCATIONs

The Board may suspend or revoke a permit if the Zoning Administrator determines that any provision of the permit has been violated, a material misstatement made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such SUSPENSION or REVOCATION shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations to the ZONING BOARD OF ADJUSTMENT.

E. Appeals

Any person affected by the PLANNING BOARD'S decision to approve or disapprove an application or any amendment thereto or any SUSPENSION or REVOCATION of a permit, may appeal to the ZONING BOARD OF ADJUSTMENT for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Zoning Board shall either grant or deny the request for rehearing within (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Zoning Board's decision on a motion or rehearing may appeal in accordance with RSA 677:4-15.

F. Penalties

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Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and 17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

170-31. Reserved.

ARTICLE X

SIGNS AND FENCES

170-32. SIGN Review and Regulations. [Amended on 3-14-84 by Ord. No. 7-84; Amended on 6-10-87 by Ord. No. 13-87; Amended on 10-26-88 by Ord. No. 18-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 04-21-93 by Ord. NO. 04-93; Amended on 11-22-95 by Ord. No. 19-95; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 03-21-2007 by Ord. No. 01-07; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 2010.10.27-13; Amended on 02-22-2012 by Ord. No. 2012.01.25; on 08-19-2015 by Ord. No. 2015.07.22-017; Amended on 12-26-2016 by Ord. No. 2016.10.12-015, Amended on 07-22-2020 by Ord. No. 2020.07.08.007, Amended on 09-14-2022 by Ord. No 2022.08.10-010.]

Purpose. The purpose of this Section is to create a legal framework for SIGNAGE regulations that is intended to facilitate a flexible and agreeable communication between people. Such an ordinance acknowledges the need to protect the safety and welfare of the public, the need for a well-maintained and attractive appearance throughout the City of Dover and the need for adequate business identification, advertising and communication. While this Section recognizes that aesthetics and design quality cannot be satisfactorily legislated, it does, however, operate on the premise that a large percent of that which is unattractive can be eliminated by sensible quality control through maintenance and inspection and by guidelines formulated to minimize clutter.

- A. Permitted SIGNs. No SIGN shall be permitted within the City of Dover, except in accordance with the provisions of this Section. See tables of Use and Dimensional Regulations by District for overview of permitted SIGNs.
- B. Permit required. No SIGN, other than a residential nameplate or a SIGN exempted from the permitting requirements of this Section as described herein shall be erected or placed in the City of Dover without a SIGN permit. Said permit shall be issued by the Zoning Administrator, provided that the SIGN meets all the regulations of this Section, after the submission of an application and a set of plans to an appropriate scale, showing site location, dimensions, method of illumination, if any, and types of materials to be used in construction. Replacement of existing SIGNs and support STRUCTURES, where the area, location or materials are being ALTERed, shall require a permit, and such replacement shall conform to the regulations of this Section.
- C. General provisions. All SIGNs shall conform to the following regulations:

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- (1) SIGN Location. SIGNS shall relate only to the premises upon which they are located, excluding TEMPORARY SIGNS as regulated in Subsection O.
- (2) All SIGNS shall be constructed, erected and maintained so as not to present a hazard to persons and property.
- (3) All SIGNS shall be erected in such a manner so as not to obstruct free and clear vision along or onto a public right-of-way.
- (4) All SIGNS shall be erected in such a manner so as not to obstruct the view of, be confused with or mistaken for any authorized traffic SIGN, signal or like device.
- (5) The illumination of any SIGN shall be nonflashing; spot or floodlights shall be arranged so that the direct rays of light do not shine or reflect directly into adjacent properties or the line of vision of a motorist.
 - (a) FLASHING SIGNS are prohibited.
 - (b) Illuminance of the SIGN face shall not exceed the following standards:
 - (i) EXTERNAL ILLUMINATION: fifty (50) foot-candles as measured on the SIGN face.
 - (ii) INTERNAL ILLUMINATION: five thousand (5,000) nits (candelas per square meter) during daylight hours, and five hundred (500) nits between dusk and dawn, as measured at the SIGN's face.
 - (iii) DIRECT ILLUMINATION: five thousand (5,000) nits during daylight hours, and five hundred (500) nits between dusk and dawn, as measured at the SIGN's face.
- (6) The top edge of a WALL SIGN shall be at least one (1) foot below the top of the wall or PARAPET wall. The top edge of a roof SIGN shall be at least one (1) foot below the roof ridge or the highest point of the roof if no ridgepole exists.^{¶¶}
- (7) No SIGN shall be painted or affixed with adhesive directly on the surface of a BUILDING.
- (8) Rotating SIGNS or beacons, waving pennants or whirling devices are prohibited.

^{¶¶}See Figure 1 of the SIGN Diagrams, Part I, included at the end of this Chapter

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- (9) TEMPORARY SIGNS are prohibited, except as otherwise provided in Subsection O.
- (10) All SIGNS are prohibited within the public right- of-way, except as otherwise provided in this Section.
- (11) The terms of this Section shall not apply to SIGNS being necessary for the public welfare and, as such, are required by the municipal, State, or Federal government.
- (12) The material and construction of any SIGN or supporting elements shall be in accordance with the Building and Electrical Codes (in use by the City at the time of installation) and all other applicable City regulations.
- (13) On a CORNER LOT, no FREESTANDING SIGN or support element shall be erected to materially impede vision between a HEIGHT of two and a half (2 ½) feet and eight (8) feet above curb grades in the same area bounded by the STREET lines of such CORNER LOT and a straight line joining points along said STREET lines thirty (30) feet from point of their intersection except as otherwise provided in this Section.
- (14) Essential directional SIGNS not exceeding four (4) square feet in area are permitted indicating entrance and exit driveways. Said SIGNS shall not be subject to the permitting requirements of this Section.
- (15) SIGNS not exceeding two (2) square feet in area are permitted in parking LOTs indicating aisles or reserved areas or spaces. Said SIGNS shall not be subject to the permitting requirements of this Section.
- (16) On a BUILDING or project under construction, or on a property currently for sale or rent, one additional SIGN is permitted and shall conform to the following additional regulations:
 - (a) One (1) SIGN not exceeding thirty-two (32) square feet is permitted on a BUILDING or project under construction. Such SIGN shall be removed upon the receipt of a CERTIFICATE OF OCCUPANCY or upon the expiration of the BUILDING permit. Said SIGN shall not be subject to the permitting requirements of this Section.
 - (b) One (1) SIGN not to exceed four (4) square feet may be erected on a property currently for sale or rent. Said SIGN shall not be subject to the permit requirements of this Section.
- (17) WALL SIGNS shall conform to the following additional regulations:

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- (a) No WALL SIGN shall be located in such a manner so as to extend above the next floor's window sill or descend below the top of the lower floor's lintel.^{§§}
 - (b) In all nonresidential zoning districts where a business/premises fronts on more than one (1) public STREET or municipal parking LOT, one (1) WALL SIGN shall be permitted upon each FRONTAGE. The SIGN AREA displayed shall not exceed that area permitted by the FRONTAGE on that public STREET or parking LOT.^{***}
 - (c) In all nonresidential zoning districts, one (1) informational/directional WALL SIGN shall be permitted for each BUILDING entryway. Said SIGN shall not exceed four (4) square feet in area and shall not be illuminated. Said SIGN shall not be subject to the permitting requirements of this Section.
- (18) All FREESTANDING SIGNS shall conform to the following regulations:
- (a) No FREESTANDING SIGNS shall be located in an area designated for parking unless said SIGN is protected along all sides by curbing. A four (4) foot clear space is required along all approaches.^{†††}
 - (b) No FREESTANDING SIGN shall be placed within fifty (50) feet of a low-density residential district (R-40, R-20) boundary.
- (19) All PROJECTING SIGNS shall conform to the following additional regulations:
- (a) PROJECTING SIGNS shall be attached to the main wall of the BUILDING.
 - (b) PROJECTING SIGNS shall be prohibited from projecting over a STREET, alley or other PUBLIC SPACE beyond four (4) feet, eight (8) inches from a BUILDING facade or two-thirds (2/3) of the width of the SIDEWALK, whichever is less.^{‡‡‡}
 - (c) A clear space of not less than ten (10) feet shall be provided below all parts of a PROJECTING SIGN, except for residential nameplates.
 - (d) In all nonresidential zoning districts where a business/premise fronts on more than one (1) public STREET or municipal parking lot, one (1) PROJECTING SIGN shall be permitted upon each FRONTAGE. The SIGN AREA displayed

^{§§}See Figure 2 of the SIGN Diagrams, Part I, included at the end of this Chapter.

^{***} See Figure 3 of the SIGN Diagrams, Part I, included at the end of this Chapter.

^{†††} See Figure 4 of the SIGN Diagrams, Part I, included at the end of this Chapter.

^{‡‡‡}See Figure 5 of the SIGN Diagrams, Part I, included at the end of this Chapter.

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shall not exceed that area permitted by the FRONTAGE on that public STREET or parking lot.

- (20) Awnings may be used in lieu of permitted WALL SIGNS provided said letters, insignia or emblems do not exceed the square footage allowed for a WALL SIGN in the applicable zoning district.

D. SIGNS permitted in residential districts. Any SIGN permitted in a Residential District shall conform to the following regulations (See tables for overview of permitted SIGNS):

- (1) CUSTOMARY HOME OCCUPATION SIGNS shall identify only the name of each occupant and the STREET address. Said SIGN shall not exceed two (2) square feet and shall not be subject to the permit requirements of this Section.
- (2) One (1) SIGN not to exceed sixteen (16) square feet may be erected in connection with any legally permitted non-residential use, excepting home occupations and BED AND BREAKFASTS.
- (3) One (1) SIGN may be erected in connection with a lawfully maintained NONCONFORMING USE.
- (4) All nonresidential SIGNS may only be illuminated by constant EXTERNAL ILLUMINATION. The lighting element shall be shielded and shall illuminate only the SIGN. No SIGN shall be illuminated after 9:00 p.m. or before 6:00 a.m.
- (5) One (1) SIGN not to exceed four (4) square feet may be erected in connection with a BED AND BREAKFAST.
- (6) No SIGN shall be located greater than eight (8) feet above the ground, whether freestanding or attached to a BUILDING

E. SIGNS permitted in CBD and CWD Districts. (See table for overview of permitted SIGNS.)

(1) WALL SIGNS^{§§§}

- (a) An additional one (1) square foot of SIGN AREA per one (1) foot of BUSINESS FRONTAGE shall be permitted, provided that the character of the SIGN conforms to mill motif design criteria. Refer to Subsection O for applicable criteria.

^{§§§} See Figure 6 of the SIGN Diagrams, Part II, included at the end of this Chapter.

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F. SIGNS permitted in C district. (See table for overview of permitted SIGNS.)

(1) FREESTANDING SIGNS

- (a) Where a PRINCIPAL BUILDING fronts on more than one (1) STREET, one (1) FREESTANDING SIGN may be erected upon each FRONTAGE, provided that the BUILDING complies with applicable SETBACKS.
- (b) One (1) FREESTANDING SIGN shall be permitted for every principal entryway to a SHOPPING CENTER. Such SIGNAGE shall be a distance of five hundred (500) feet apart.
- (c) Each FREESTANDING SIGN shall not exceed sixteen (16) feet in HEIGHT, except as provided for below, and shall be permanently affixed to the ground. Notwithstanding, FREESTANDING SIGNS fronting on the Spaulding Turnpike shall not exceed thirty (30) feet in HEIGHT.
- (d) Notwithstanding, no FREESTANDING SIGN shall be allowed on Old Rochester Road.

G. SIGNS permitted in O and Gateway district. No SIGN shall be illuminated after 9:00 p.m. or before 6:00 a.m. (See table for overview of permitted SIGNS.)

- (1) SIGNS shall only be illuminated by constant EXTERNAL ILLUMINATION. The lighting element shall be shielded and shall illuminate only the SIGN.

H. SIGNS permitted in CM district. (See table for overview of permitted SIGNS.)

(1) FREESTANDING SIGNS

- (a) Where a PRINCIPAL BUILDING fronts on more than one (1) STREET, one (1) FREESTANDING SIGN may be erected upon each FRONTAGE, provided that the BUILDING complies with applicable SIGNAGE SETBACKS.
- (b) Two (2) FREESTANDING DEVELOPMENT IDENTIFICATION SIGNS shall be permitted per approved industrial park, provided that the combined square footage of such SIGNS does not exceed five hundred (500) square feet in area, and that, if on a CORNER LOT, such SIGNS shall be set so as to not materially impede vision.

I. SIGNS permitted in IT district. (See table for overview of permitted SIGNS.)

(1) FREESTANDING SIGNS

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- (a) Where a development fronts on more than one (1) public STREET or roadway, one (1) FREESTANDING SIGN shall be permitted upon each FRONTAGE.
 - (b) Each FREESTANDING SIGN shall not exceed sixteen (16) feet in HEIGHT, except as provided for below, and shall be permanently affixed to the ground. Notwithstanding, FREESTANDING SIGNs fronting on the Spaulding Turnpike shall not exceed thirty (30) feet in HEIGHT.
 - (c) SIGN AREA shall not exceed sixty (60) square feet in area. Notwithstanding, a FREESTANDING SIGN fronting the Spaulding Turnpike shall not exceed one hundred (100) square feet in area.
- J. Political advertising SIGNs. Political advertising SIGNs are permitted per the political advertising SIGN provisions of State law.
- K. Obsolete SIGNs. Any SIGN which is located on property which becomes vacant and unoccupied for a period of more than six (6) months shall be deemed to have been abandoned, and the SIGN shall be considered obsolete. Such obsolete SIGNs are prohibited and shall be removed by the owner of the SIGN or owner of the premises. In the event that the said SIGN(s) and support(s) are not removed as requested by the Zoning Administrator, the City of Dover may remove said STRUCTURE(s) and assess all costs and expenses incurred in said removal against the STRUCTURE's owners and/or the owner of the land upon which said STRUCTURE(s) is located.
- L. Nonconforming SIGNs. A SIGN installed prior to the effective date of this Section which meets the applicable requirements of the zoning code then in effect but which is not in conformance with the provisions of this code, shall be deemed a permitted nonconforming SIGN. Such nonconforming SIGN shall, however, be subject to the following regulations:
- (1) No nonconforming SIGN shall be ALTERed in any way in STRUCTURE or material, which makes the SIGN less in compliance with the requirements of this Section than it was before the ALTERATIONS.
 - (2) No nonconforming SIGN shall be relocated to a position making it less compliant with the requirements of this Section.
 - (3) Non-conforming FREESTANDING SIGNs and PROJECTING SIGNs may be replaced upon approval of a SIGN permit application, provided that the support STRUCTURE of the SIGN remains in place and the dimensions of the SIGN are the same or smaller. If any other nonconforming SIGN is replaced, it shall be replaced in total with a SIGN that is in conformance with the provisions of this Section.

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- (4) Should a nonconforming SIGN be destroyed by any means to an extent of more than seventy-five percent (75%) of its replacement cost at the time of its destruction, it shall not be reconstructed except in conformity with the provisions of this Section.

M. Mill motif design criteria.

(1) Intent.

- a. A recurring architectural theme exists within the Central Business District, where the use of brick, granite and slate dominates much of the existing commercial BUILDING stock. Influenced by the early 19th century mill development, SIGNAGE was closely integrated with the style and composition of the BUILDING, often consisting of handsomely carved and painted wooden signboards. The use of dark background tones, highlighted with bright lettering was dominant. PROJECTING SIGNS were typically constructed from dark-hued metal, cast iron in particular, and internal lighting or use of plastics, aluminum and vinyl was nonexistent.
- b. The use of a mill motif SIGNAGE theme is an attempt to promote a style or architectural continuity within Dover's urban center. Within the defined mill motif theme, a great amount of flexibility is permitted where design and materials are involved, and all SIGNAGE should be guided by general design criteria.

(2) SIGN location.

- (a) Every SIGN shall be required to be an integral part of its BUILDING.

SIGNS shall be located with respect to the basic architectural framework of the BUILDING, so as not to obscure the primary elements (door and window openings and decorative facade treatments) of a BUILDING's framework.

(3) SIGN composition.

(a) Lettering.

- (i) No more than one (1) font shall be permitted per SIGN. More than one (1) size is permitted.
- (ii) Letters may be attached to the BUILDING façade.
- (iii) Light-colored letters on a dark background are required.

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- (iv) Lettering shall be located so as not to obstruct architectural detailing on the BUILDING face.
 - (v) Product trademarks are not permitted. Generic trade symbols (e.g., a shoe for a cobbler, a mortar and pestle for a druggist) are permitted.
 - (vi) Letter styles shall be limited to the classic genre, i.e., Copperplate Gothic, Times, Franklin Gothic, Benton, Clarendon, Haas Helvetica, Folio Caravelle Medium, Windsor, and Times Roman.
 - (vii) The size of the lettering shall be in proportion to both the SIGN configuration and the BUILDING.
- (b) Color.
- (i) No more than three (3) colors are preferred, plus black and white. Differences in shade or hue are considered different colors. Lettering is limited to one (1) color.
 - (ii) Colors used in SIGNAGE should relate to the color composition of the BUILDING material and be compatible with them.
 - (iii) The determination of SIGN color must relate to the degree of contrast between the SIGN lettering and SIGN background.
- (c) Lighting.
- (i) INTERNAL ILLUMINATION and DIRECT IILLUMINATION are prohibited.
 - (ii) Only shielded EXTERNAL ILLUMINATION shall be permitted if lighting is used.
- (d) Materials.
- (i) The appearance of traditional materials, such as wood, glass, brass, bronze or iron, is required.
 - (ii) Wooden SIGNS shall be constructed of dense, clear wood that adapts to engraving/carving and paint or stain. The use of plywood shall be limited to overlay, exterior or marine plywood.
 - (iii) PROJECTING SIGNS shall be supported by black, iron attachments to the BUILDING. Guy wires shall not be permitted as a principle SIGN support member.

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- (iv) No support for a PROJECTING SIGN shall extend above the cornice line of the BUILDING to which it is attached.

(4) Permit process

- (a) The Zoning Administrator shall be responsible for the issuance of SIGN permits relative to mill motif accessory SIGNs. Application for said SIGNs shall include the following items:

- (i) A scaled elevation drawing of the entire BUILDING façade(s).
- (ii) Proposed SIGN clearly delineated on the elevation drawing.
- (iii) Detailed drawings indicating materials, size, colors and style of lettering, lighting and attachment method.
- (iv) A photograph of the BUILDING.
- (v) A sample color rendering of the intended SIGN.

- (b) Upon completion of the review, the Zoning Administrator will approve or disapprove the application and inform the APPLICANT of the decision in writing.

N. Fees for the review of SIGNAGE are set annually and may be found in the City's Fee Schedule.

O. TEMPORARY SIGNs. No TEMPORARY SIGN shall be erected or placed in the City of Dover without a TEMPORARY SIGN permit issued by the Planning and Community Development Department, except as noted in Subsections (1)(b). The following regulations shall apply:

(1) TEMPORARY SIGNs are prohibited in all residential zoning districts (R-40, R-20, R-12, RM-SU, RM-U, HR, and CBD-R). Where permitted TEMPORARY SIGNs are subject to the following regulations:

(a) TEMPORARY SIGNs Allowed With One-Week Permit. A LOT or tenant may obtain a TEMPORARY SIGN permit for one week, provided that all of the following conditions are met:

- (i) One-week TEMPORARY SIGN permits are valid for a consecutive seven (7) day period and may be obtained once every three (3) months, for a maximum of four (4) one-week TEMPORARY SIGNs per year. If the

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permit is not used in one (1) quarter, it shall not be carried over to the next quarter.

- (ii) The TEMPORARY SIGN shall be limited to twenty-four (24) square feet in size and shall not be placed in such a manner so as to create a traffic or safety hazard. Banner type TEMPORARY SIGNS are permitted only in the C Zoning Districts.
 - (iii) The TEMPORARY SIGN shall be removed within twenty-four (24) hours after the end of the approved display period. If the TEMPORARY SIGN or banner is not removed within twenty-four (24) hours, the TEMPORARY SIGN or banner may be removed by the City of Dover.
 - (iv) If the TEMPORARY SIGN is located on a City SIDEWALK or within a public right-of-way directly in front of the BUILDING, the requirements in Subsection O.(1)(d) must be met.
- (b) TEMPORARY SIGNS Allowed Without a Permit. One (1) A-frame sandwich board TEMPORARY SIGN is permitted per LOT or tenant and does not require a permit, provided all of the following conditions are met:
- (i) The TEMPORARY SIGN is not located on a City SIDEWALK or within a public right-of-way.
 - (ii) The maximum size of the TEMPORARY SIGN is eight (8) square feet.
 - (iii) The TEMPORARY SIGN must be placed directly in front of the BUILDING at a distance no greater than two (2) feet from the BUILDING and must not impede pedestrian or handicapped access to the business or adjacent businesses.
- (c) TEMPORARY SIGNS Allowed With Annual Permit. One (1) TEMPORARY SIGN shall be permitted per each PRINCIPAL BUILDING. BUILDINGs with an excess of one hundred (100) feet of STREET FRONTAGE shall be permitted one (1) additional TEMPORARY SIGN per every additional one hundred (100) feet of STREET FRONTAGE. See District Tables of Use for additional requirements.
- (i) If the TEMPORARY SIGN is located on a City SIDEWALK or within a public right-of-way directly in front of the BUILDING, the requirements in Subsection O.(1)(d) must be met.

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- (ii) The following additional regulations shall apply to TEMPORARY SIGNs located in the CBD-General District:
 - 1. The structure of the TEMPORARY SIGN must consist of medium density overlay plywood, or a similar durable wood-like material which can withstand the weather, or metal (except as supplemented by material for changeable messages, see below). The use of other materials is permitted if styled and composed to imitate wood or metal.
 - 2. Any graphics, lettering, words, numbers, messages and/or symbols on the TEMPORARY SIGN shall be applied directly onto the surface of the SIGN and/or shall be made with SIGN plastic film.
 - 3. The material for changeable messages shall be either chalk board or dry erase board. TEMPORARY SIGNs with moveable slide-in plastic letters are not permitted.
 - 4. TEMPORARY SIGNs using stencils or spray paint are not permitted.
 - 5. TEMPORARY SIGNs may not be painted traffic yellow or construction-zone orange or use any reflective or fluorescent materials.

- (d) TEMPORARY SIGNs Located on a City SIDEWALK or Within a Public Right-of-Way. TEMPORARY SIGNs located on a City SIDEWALK or within a public right-of-way shall meet the following requirements:
 - (i) A certificate of insurance in the amount of one hundred thousand (\$100,000.00) dollars (bodily injury/property damage) shall be filed as part of the TEMPORARY SIGN permit application to ensure sufficient liability coverage of the APPLICANT.
 - (ii) A hold-harmless certification letter shall be filed as part of the temporary SIGN permit application to relieve the City of Dover from bodily injury and property damage liability.
 - (iii) TEMPORARY SIGNs shall only be displayed during business hours.
 - (iv) A five (5) foot, clear passageway must be maintained at all times.
 - (v) TEMPORARY SIGNs shall be located directly in front of the BUILDING or in front of the space within the BUILDING occupied by the TEMPORARY SIGN owner.

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- (2) Community SIGNS. With a permit, TEMPORARY SIGNS may be located in the public right of way at Central Square, Weeks Crossing, and the intersections of Durham Road and Back River Road, Sixth Street and Indian Brook Drive, and Knox Marsh Road and Littleworth Road provided that the following requirements are met:
- (a) Community SIGNS shall be a-frame/sandwich board type and no larger than six (6) square feet in area and no greater than three (3) feet in height.
 - (b) No more than three (3) permits shall be issued per location, per display period.
 - (c) Each week of the year shall constitute one display period. No APPLICANT will be issued a community SIGN permit for more than twelve (12) display periods per calendar year.
 - (d) Applications for community SIGN permits will be accepted by the Planning and Community Development Department only during the week prior to the display period. Applications will not be accepted in advance unless an entire calendar year's display schedule and payment of fees are submitted by the APPLICANT. Permits will be granted on a first-come, first-served basis.
 - (e) Applications must be signed by the property owner (APPLICANT or APPLICANT's landlord) and shall include:
 - (i) A certificate of insurance in the amount of one hundred thousand dollars (\$100,000.00) (bodily injury/property damage) to ensure sufficient liability coverage of the APPLICANT.
 - (ii) A hold-harmless certification letter to relieve the City of Dover from bodily injury and property liability.
 - (f) A display period sticker will be issued with the community SIGN permit and shall be affixed to the lower right corner of the SIGN face.

170-33. FENCE Review and Regulations. [Amended on 02-17-99 by Ord. No. 25-98; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 2010.10.27-13; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 06-22-2016 by Ord. No. 2016.06.08-010, Amended on 07-22-2020 by Ord. No. 2020.07.08.007.]

- A. FENCE HEIGHTs. No person, or other entity shall erect or cause to be erected a FENCE exceeding four (4) feet in HEIGHT between the RIGHT OF WAY and either ten (10) feet from the RIGHT OF WAY or a line parallel with the front of the house closest to the RIGHT OF WAY, whichever is less. FENCES may be up to eight (8) feet in HEIGHT for the remainder of the lot. HEIGHT is measured from ground level.

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B. FENCE design.

- (1) The finished side of a FENCE shall face outward from the property on which the FENCE is located. The side of a FENCE containing the posts or poles and other bracing appurtenances shall face inward to the property being FENCED in or on which the FENCE is located. When erected on a property or LOT boundary line, all of the FENCE and any of its supporting STRUCTURES or appurtenances shall be contained within the LOT or property of the person erecting said FENCE.
- (2) On a CORNER LOT, no FENCE or vegetal elements shall be erected or placed in such a manner(s) as to materially impede vision between that area bounded by the STREET lines of such CORNER LOT and a straight line joining points along said STREET lines thirty (30) feet from the point to the intersection. For CORNER LOTs that are located on the inside curve of STREETS and at intersections that are not perpendicular, adequate and safe sight distances in both directions, as determined by the Zoning Administrator, shall be provided. Property owners shall maintain vegetation such that it does not grow to limit site distance.

- C. Exceptions. The provisions described in Subsection A shall not apply in the Commercial Manufacturing (CM), Commercial (C), Central Business (CBD), Gateway (G) OFFICE (O), and Cochecho Waterfront (CWD) Zoning Districts, or whenever the ZONING BOARD OF ADJUSTMENT, as a condition attached to the granting of a variance or special exception to this Chapter, requires for screening purposes a FENCE exceeding eight (8) feet.

170-34 through 170-38 (Reserved).

ARTICLE XI

NONCONFORMING LOTS, USES AND STRUCTURES

170-39. Reserved

170-40. NONCONFORMING USEs of Land. [Amended on 08-01-90 by Ord. No. 8-90; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

Where, at the time of passage of this Chapter, lawful use of land exists which would not be permitted by the regulations imposed by this Chapter, the use may be continued so long as it remains otherwise lawful, provided that:

- A. No such NONCONFORMING USE shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter with the exception of a single-family STRUCTURE. Said single-family STRUCTURE may be expanded up to twenty percent (20%) of its gross

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habitable floor space provided the addition conforms with all other applicable regulations and ordinances and no additional units are created.

- B. No such NONCONFORMING USE shall be moved, in whole or in part, to any portion of the LOT or parcel other than that occupied by such use at the effective date of adoption or amendment of this Chapter.
- C. If any such NONCONFORMING USE of land ceases for any reason for a period of more than twelve (12) consecutive months or for twenty-four (24) months during any three (3) year period, any subsequent use of such land shall conform to the regulations specified by this Chapter for the district in which such land is located.
- D. No additional STRUCTURE not conforming to the requirements of this Chapter shall be erected in connection with such NONCONFORMING USE of land with the exception of ACCESSORY STRUCTURES associated with a single-family house provided they comply with all other applicable City ordinances and regulations.
- E. The above notwithstanding, if a LOT meets the requirements of 170-14, any additions or ACCESSORY STRUCTURES may be allowed to meet the SIDE YARD SETBACKS outlined therein.

170-41. Nonconforming STRUCTURES. [Amended on 08-01-90 by Ord. No. 8-90; Amended on 02-17-99 by Ord. No. 25-98; Amended on 08-22-2018 by Ord. No. 2018.08.08-009.]

Where a lawful STRUCTURE exists at the effective date of adoption or amendment of this Chapter that could not be built under the terms of this Chapter by reason of restrictions on area, LOT COVERAGE, HEIGHT or yards, its location on the LOT or other requirements concerning the STRUCTURE may be continued so long as it remains otherwise lawful, subject to the following:

- A. Except as provided for in 170-40.A and 170-41.D, no such nonconforming STRUCTURE may be enlarged or ALTERed in a way which increases its nonconformity, but any STRUCTURE or portion thereof may be ALTERed to decrease its nonconformity.
- B. A BUILDING or STRUCTURE nonconforming either in terms of use or BULK may be restored to its former BULK if destroyed by fire, other hazard or if it is determined by the BUILDING OFFICIAL to be a hazard to persons or BUILDINGS abutting it, provided that restoration of the STRUCTURE is begun within twelve (12) months after the act of destruction. All such STRUCTURES in use at the time of destruction for agricultural purposes shall be exempt from the provisions of this subsection, provided that such reconstruction, ALTERATIONS or repairs are in compliance with the provisions of subsection A.

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- C. Should such STRUCTURE be intentionally moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. Additions to nonconforming single-family STRUCTURES, that were made nonconforming by a zoning amendment that changed the front, side or REAR SETBACK requirements, shall be permitted within the front, side or REAR SETBACK areas provided that the addition is no closer to the LOT LINE than the existing nonconforming STRUCTURE, and no closer than ten (10) feet from the LOT LINE.
- E. For nonconforming single-family STRUCTURES, that were made nonconforming by a zoning amendment that changed the front, side or REAR SETBACK requirements, Accessory Structures that are less than one story in height, shall be permitted within the front, side or REAR SETBACK areas provided that the accessory structure is no closer to the LOT LINE than the existing nonconforming Principal STRUCTURE, and no closer than five (5) feet from the LOT LINE, and has no windows on the side of the building facing that encroached area.

170-42. Repairs and Maintenance. [Amended on 08-22-2018 by Ord. No. 2018.08.08-009]

On any nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE, ordinary repairs may be made, subject to the following provisions: if a nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE becomes physically unsafe or unlawful due to lack of repairs and maintenance and is so declared by the Housing Standards Board to be unsafe or unlawful by reason of physical condition, an owner shall be able to restore, repair or rebuild it within six (6) months of said determination, in its existing location, unless an extension is granted by the Housing Standards Board. Otherwise, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located. Any duly authorized official charged with protecting the public safety may rightfully order a STRUCTURE to be secured to a safe condition.

170-43. Uses Permitted by Special Exception.

Any use which is permitted as a special exception in a district under the terms of this Chapter (other than a change through the Zoning Board of Adjustment action from a NONCONFORMING USE to another use not generally permitted in the district) shall not be deemed a NONCONFORMING USE in such district, but shall without further action be considered a conforming use.

ARTICLE XII

OFF-STREET PARKING AND LOADING

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170-44. Applicability. [Amended on 9-24-80 by Ord. No. 15-80; Amended on 3-30-83 by Ord. No. 5-83; Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No. 8-90; Amended on 11-13-96 by Ord. No. 19-96; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

The following conditions shall apply to all parking and loading spaces provided in conformance with this Chapter:

- A. Conformity with the Site Review Regulations, Chapter 149, Subsections 149-14 and 149-15, site development criteria.
- B. Where PARKING SPACES are provided for nonresidential STRUCTUREs and this parking area adjoins a residential use, suitable screening at least seven (7) feet in HEIGHT shall be provided and maintained.
- C. In CBD/CWD municipal parking facilities may be substituted for the requirements of this Section.
- D. PARKING SPACES for non-residential uses and MULTI-FAMILY DWELLINGs shall have independent access to an aisle or driveway and be accessible year round.

170-45. Reserved. [Removed on 12-2009-2009 by Ord. No. 2009.09.09-15.]

170-46. Reserved. [Removed on 06-22-2016 by Ord. No. 2016.06.08-010]

ARTICLE XIII

ADMINISTRATION

170-47. Administrative Officer. [Amended 12-09-2009 by Ord. No. 2009.09.09-15]

- A. This Chapter shall be enforced by the Zoning Administrator, who shall have the authority to make inspections necessary to carry out his/her duties in the enforcement of this Chapter.
- B. The Building Inspector shall not approve an application or issue a BUILDING permit or CERTIFICATE OF OCCUPANCY for any purpose, except in compliance with the provisions of this Chapter.

170-48 – 170-150. Reserved. [Removed on 12-09-2009 by Ord. No. 2009.09.09-15]

170-51. Violations and Penalties. [Amended on 9-24-80 by Ord. No. 15-80.]

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The administration and enforcement of this ordinance shall be in any manner authorized by State statute, including but not limited to, RSA 31:39-d, 676:14, 676:15, 676:17, 676:17-a, and 676:17-b.

170-52. ZONING BOARD OF ADJUSTMENT. [Amended on 9-24-80 by Ord. No. 15-80; Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No.8-90; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

- A. Purpose. The purpose of the ZONING BOARD OF ADJUSTMENT is to hear and decide appeals of any person(s) who are aggrieved by the administration, enforcement and application of this Chapter.
- B. Authority. The ZONING BOARD OF ADJUSTMENT shall be duly constituted and shall have such duties and powers as specified under RSA 673:3 and 674:33 and this Chapter as set forth herein.
- C. Powers and duties.
 - (1) Powers. The ZONING BOARD OF ADJUSTMENT shall have the following powers:
 - (a) To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made in the enforcement of this Chapter (interpretation of ordinance).
 - (b) To hear and decide special exceptions to the terms of this Chapter upon which the ZONING BOARD OF ADJUSTMENT is required to pass under this Chapter (special exception).
 - (c) To authorize, upon appeal in specific cases, such variance from the terms of this Chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship and so that the spirit of this Chapter shall be observed and substantial justice done (variance).
 - (d) To hear and decide requests for equitable waivers from the dimensional terms of this Chapter upon where a STRUCTURE has been found to be in violation of said dimensional requirement.
 - (2) Interpretation of Chapter.
 - (a) On appeal from an order or decision made by any officer or board of the City, the ZONING BOARD OF ADJUSTMENT shall have the power to decide any of the following questions:

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- (i) Determination of the meaning of any provision of the text of this Chapter.
 - (ii) Determination of the exact location of any district boundary shown on the Zoning Map. ****
 - (iii) ZONING BOARD OF ADJUSTMENT shall hear and decide appeals de novo and review on appeal any order, requirement, decision or determination made in the enforcement or application of this Chapter. Upon such appeal, the ZONING BOARD OF ADJUSTMENT may, in accordance with the provisions of this Chapter, reverse or affirm, wholly or partly, or may modify any such order, requirement or decision, as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- (3) Special exceptions. ZONING BOARD OF ADJUSTMENT shall have the power to hear and decide on application for special exceptions. In applying a special exception, the APPLICANT need not demonstrate hardship, since the basis for the action is of general benefit to the city as a whole. In granting a special exception, the ZONING BOARD OF ADJUSTMENT, with due regard to the nature and condition of all adjacent STRUCTURES and uses and the district within which the same is located, shall find all of the following general conditions to be fulfilled:
- (a) The requested use is essential or desirable to the public convenience or welfare.
 - (b) The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
 - (c) The requested use will not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.
 - (d) Any special exception which has not been acted upon in accordance with the approval of the ZONING BOARD OF ADJUSTMENT within four (4) years of the date of said approval shall be considered null and void.
- (4) Variances.

**** Said Zoning Map in on file in the office of the City Clerk, where it may be examined during regular business hours.

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- (a) The ZONING BOARD OF ADJUSTMENT may authorize a variance from the terms of this Chapter for:
 - (i) A particular use.
 - (ii) A parcel of land.
 - (iii) An existing/proposed BUILDING.
- (b) Said variance shall only be granted where unusual difficulty or special hardship would be imposed by the literal application and rigorous enforcement of this Chapter.
- (c) In granting variances, the ZONING BOARD OF ADJUSTMENT, if it deems it proper to the carrying out of the intent and purpose of this Chapter, may impose such reasonable and additional stipulations and conditions as will, in its judgment, better fulfill the purpose of the Chapter.
- (d) Any variance which has not been acted upon in accordance with the approval of the ZONING BOARD OF ADJUSTMENT within four (4) years of the date of said approval shall be considered null and void.
- (5) Other requirements. The granting of any appeal by the ZONING BOARD OF ADJUSTMENT shall not exempt the APPLICANT from any provision of this Chapter not specifically ruled upon by the ZONING BOARD OF ADJUSTMENT or specifically set forth as excepted in this particular case from a provision of this Chapter. It shall be unlawful for any owner or person to reconstruct, convert or ALTER a STRUCTURE or change the use, increase the intensity of use or extend or displace the use of any BUILDING, other STRUCTURE or LOT or change any required limitations or special conditions imposed by the ZONING BOARD OF ADJUSTMENT in authorizing a special exception or variance without appealing to the ZONING BOARD OF ADJUSTMENT as a new case, over which the ZONING BOARD OF ADJUSTMENT shall have complete administrative power to deny, approve or modify.
- (6) Public Hearing. The ZONING BOARD OF ADJUSTMENT shall fix a reasonable time for the hearing of an appeal in accordance to its By-Laws; and before any hearing is given either on an appeal or an application for variance or special exception of this Chapter, notice shall be given to all ABUTTERS of any portion of the LOT in question. Notice shall be given to ABUTTERS by Verified Mail, and also placed in a newspaper of general circulation, not less than five (5) days before the date fixed for the hearing of the appeal. The costs of any notice shall be paid by the appellant or APPLICANT to the Department of Planning and Community Development

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D. Appeal from the decision of the ZONING BOARD OF ADJUSTMENT.

- (1) Rehearing. Within thirty (30) days after any order or decision of the ZONING BOARD OF ADJUSTMENT, any party to the action or proceedings or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding or covered or included in the order, specifying in the motion for rehearing the grounds therefor; and the ZONING BOARD OF ADJUSTMENT may grant such rehearing if, in its opinion, good reason therefor is said in such motion.

- (2) Appeal to Superior Court. No appeal from any order or decision of the ZONING BOARD OF ADJUSTMENT shall be taken unless the appellant shall have made application for rehearing as provided above, and when such application shall have been made, no ground set forth herein shall be urged, relied on or given any consideration by the Court, unless the Court for good cause shown shall allow the appellant to specify additional grounds. Within thirty (30) days after the application for a rehearing is denied or, if the application is granted, then within thirty (30) days of the decision on such rehearing, the APPLICANT may appeal by petition to the Superior Court.

170-53. Amendment Procedure. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15]

- A. Power to Amend. In accordance with RSA 674:16, the City Council may, from time to time, amend the provisions of this Chapter.

- B. Initiation of Amendments. Amendments may be initiated by the City Council, the PLANNING BOARD, or by petition from one or more property owners in Dover or citizens of Dover.

- C. Procedure for Consideration of a Proposed Amendment.
 - (1) Amendments Initiated by the PLANNING BOARD. The PLANNING BOARD may, upon its own initiative, from time to time, consider amendments to this Chapter or Zoning Map, and submit recommendations for amendments to the City Council. Such amendments shall be developed pursuant to the public notice and hearing requirements contained in Section D below.

 - (2) Amendments Initiated by the City Council. The City Council may, upon its own initiative, from time to time, consider amendments to this Chapter or Zoning Map. All such City Council initiated amendments shall be referred to the PLANNING BOARD for its review and study. The referral shall be made in writing by the Mayor. The PLANNING BOARD shall, after following the public notice and hearing requirements contained in Section D below, submit written

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recommendations regarding the amendments to the City Council within sixty (60) days of their referral.

- (3) Amendments Initiated by Dover Citizens or Property Owners. Dover citizens or owners of property in Dover submitting amendments to this Chapter or Zoning Map, shall forward their proposed amendments to the PLANNING BOARD for its consideration and recommendation. Such submission shall contain the information required by Section E below. The PLANNING BOARD shall have the petition placed on the agenda for its next regularly scheduled meeting that proper notice, as required in Section D below, can be met. After the public hearing, the PLANNING BOARD shall make its recommendations concerning the petitioned amendments to the City Council within sixty (60) days of the date of the initial public hearing.

D. Public Notice and Hearing Requirements.

- (1) Public Notice. Public notice shall be given for the time and place of the public hearing at least ten (10) days before the hearing, not including the day the notice is posted or published or the day of the public hearing. Notice of the public hearing shall be placed in a newspaper of general circulation in the city and shall be posted in at least three (3) public places, including the City web-site.
- (2) Notice to Landowners and ABUTTERS. Except as hereinafter provided, a letter of notification shall be sent to landowners whose property lies within that area affected by the proposed amendment and to landowners whose property lies within one hundred (100) feet of the subject area. All such notices shall be by first class mail and shall be sent at least ten (10) days prior to the scheduled public hearing date.
- (3) Text of Notice. All letters of notification and public notices shall state the time and place of the public hearing, the nature of the amendment, a general description of the property involved, where applicable, and designating a place where the full text of the amendment is on file for public inspection.

E. Submission Requirements for Petitioned Amendments.

A petitioned amendment proposal shall be accompanied by maps, data and narrative information describing the location, nature and purpose of the proposed amendment, as follows:

- (1) A properly drafted ordinance containing the amendment in a form meeting the requirements of the City Clerk;
- (2) A statement of the purposes and intent of the proposed amendment

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- (3) A statement of the impact of the proposed amendment on the City's economy, environment, municipal services, municipal facilities and NEIGHBORHOODs;
- (4) A map showing the existing zoning districts and the amendments to these districts as proposed in the amendment, if applicable;
- (5) The names, addresses, and telephone numbers of those submitting the petition and of any agents or representatives of the same;
- (6) A list and address labels including the name, address, and tax map number of each property owner of the area proposed for rezoning and each property owner within one hundred (100) feet of the subject area. The list shall be current within ten (10) days of submittal; and
- (7) A non-refundable fee as contained within the Fee Schedule to cover the cost of the newspaper notice, and a non-refundable fee as contained within the Fee Schedule per landowner and ABUTTER required to be notified per Section D (2).

F. Criteria for PLANNING BOARD Review of Proposed Amendments.

The PLANNING BOARD shall provide to the City Council a report on each proposed amendment. The report of the PLANNING BOARD shall include the PLANNING BOARD's findings and recommendations on the following:

- (1) The consistency of the proposed amendment with the Master Plan;
- (2) The consistency of the proposed amendment with other plans, studies, or technical reports prepared by or for the PLANNING BOARD and the City;
- (3) The effect of the proposed amendment on the City's municipal services and capital facilities as described in the Capital Improvements Program;
- (4) The effect of the proposed amendment on the natural, environment, and historical resources of the City;
- (5) The effect of the proposed amendment on NEIGHBORHOOD including the extent to which nonconformities will be created or eliminated;
- (6) The effect of the proposed amendment on the City's economy and fiscal resources; and
- (7) The recommendation of the PLANNING BOARD relative to whether the proposed amendment should be adopted or rejected, and any recommendations for modifications to the proposed amendment.

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G. City Council Action on Proposed Amendments.

- (1) **Setting a Hearing Date.** Upon receipt of the PLANNING BOARD's report and recommendations on the proposed amendment, or upon the expiration of the sixty (60) day study period, the City Council shall establish a date for a public hearing and shall further publish and post a notice of such hearing as specified in Section D.
- (2) **Waiver of Notice.** In the event that the proposed amendment is comprehensive in nature, the aforementioned provisions requiring notice by first class mail to individual landowners and ABUTTERS may be waived by a majority vote of the full City Council, with respect to the public hearing to be held before it. An amendment shall be deemed to be comprehensive in nature if it affects more than one (1) of the zoning districts established by 170-7 of this Chapter. Under no circumstances may the provisions for publication of notice in a newspaper or posting of public notice contained in Section D.(1) of this section be waived.
- (3) **Action on the Proposed Amendment.** After holding the duly noticed public hearing on a proposed amendment, the City Council shall approve or disapprove the amendment. The City Council shall not have the right to overrule the PLANNING BOARD recommendations unless by a vote of not less than two-thirds (2/3) of its membership present and voting.
- (4) **Protest Petition.** If a valid protest petition, in accordance with RSA 675:5, has been filed against a proposed amendment, a favorable vote of two-thirds (2/3) of the City Council members present shall be required