

# **Site Plan Review Ordinance**

## **Town of Cushing, Maine**

**As Adopted on March \_\_\_\_, 2019**

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## **1. PURPOSE**

The purpose of this ordinance is to set standards and permitting procedures for non-residential land and building uses.

It is the intent of this ordinance to establish a reasonable permitting procedure for townspeople to engage in traditional and customary occupations on their own property, and to ensure that development is compatible with the rural character of the town.

The Site Plan Review provisions set forth in this ordinance are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment. They also seek to address townspeople's concerns about their right to enjoy their property in peace and tranquility. This Ordinance strives to find a balance between one's right to make a living and the sanctity of others' property without being either too restrictive or too permissive.

The specific purposes of the Ordinance are as follows:

**PROTECTION OF THE GENERAL WELFARE:** To assure the comfort, convenience, safety, health and welfare of the present and future inhabitants of the Town.

**PRESERVATION OF THE TOWN CHARACTER:** To preserve and protect the character of the Town by regulating the use of land and buildings and the intensity of uses.

**PROTECTION OF THE ENVIRONMENT:** To protect and enhance the natural, cultural, and historic resources of the Town from unacceptable adverse impacts and to integrate new development harmoniously into the Town's natural environment.

**PROMOTION OF TRAFFIC SAFETY:** To lessen the danger from traffic on roads and highways; limit excessive numbers of intersections, driveways, and other friction points; and minimize hazards to the safe and uninterrupted movement of vehicles on public roads.

**BALANCING OF PROPERTY RIGHTS:** To protect property rights and values by balancing the rights of landowners to use their land with the corresponding rights of abutting and neighboring landowners to enjoy their property without undue disturbance from abutting or neighboring uses.

**ESTABLISHMENT OF PROCEDURES/STANDARDS:** To establish procedures whereby the Town Officials may review the development activity regulated by this Ordinance and to provide fair and reasonable standards for evaluating such development.

## 2. AUTHORITY

The authority for this Ordinance is conferred upon the Town of Cushing by the Home Rule Power of Article VIII, Part 2 of the Maine Constitution, and 30-A § M.R.S.A., Section 3001.

## 3. APPLICABILITY & EXEMPTIONS

This Ordinance applies town-wide to commercial, industrial, and institutional uses and activities, and to similar non-profit uses and activities. The intention is to allow growth and not unduly impinge on entrepreneurial endeavors of the residents.

Developments subject to this Ordinance shall be classified and defined according to the following categories. The Code Enforcement Officer shall make a preliminary determination of the classification, which shall be subject to review and modification by the Planning Board.

**A. In-Home Occupation** - Site plan review is not required for any In-Home Occupation. To be classified as an In-Home Occupation, a business must meet the following criteria:

1. The occupation shall be engaged by residents or family members and no more than three other persons who do not reside on the property.
2. No illuminated signs shall be displayed.
3. Any needed parking shall be met by off-street provisions or an existing driveway.

Any business that does not meet each of the above criteria shall be classified as a Low-impact or High-Impact Business.

**B. Low-Impact Business** - A business shall be subject to classification and review as a Low-Impact Business if it meets any of the following criteria:

1. It employs more than three but less than 25 employees who do not reside on the property.
2. It will display more than two signs.
3. It will require exterior lighting that is not typical of a residential property.

### **C. High-Impact Business**

A business shall be subject to classification and review as a High-Impact Business if it meets any of the following criteria:

1. It employs 25 or more employees who do not reside on the property.
2. It will create more than 20 vehicle trips per day other than by employees coming to or leaving work.
3. Activities to be conducted on the property including, but not limited to, retail sales, warehousing, assembling (other than light assembly of pre-fabricated parts), fabricating, manufacturing, packaging, or processing, service and repair operations.
4. Activities to be conducted on the property are reasonably likely to create excessive odors, dust or airborne particles or noise that may travel past the property boundaries.

**D. Special Structure** - This category includes, but is not limited to, towers or antennas or any other structure, not otherwise classified as a business, which is over 33 feet in height above the ground, such as Public Safety, Doppler Radio, wind turbines, power line towers, and such others. Review pursuant to this ordinance shall be in addition to any required review and permitting required by any other town ordinance.

**E. Permit Required.** Low and High-Impact Businesses and Special Structures shall be required to receive site plan review and approval subject to this Ordinance for the following activities:

1. New construction of buildings, structures, or accessory structures over 2,500 square feet, either individually or in the aggregate, and/or over 33 feet high.
2. Construction or expansion of paved areas or other impervious surfaces, including walkways, access drives, or parking lots, of 2,500 square feet individually or in the aggregate;
3. Conversions of buildings, structures, accessory structures, or parking areas from residential use to non-residential use, or from one non-residential use to another non-residential use;
4. Expansions of existing buildings, structures, accessory structures, or parking areas by more than 2,500 square feet individually or in the aggregate;
5. The establishment of a new non-residential use even if no buildings or structures are proposed, including uses such as gravel pits, mineral extraction activity, blasting, cemeteries, golf courses, and other non-

- structural, non-residential uses, and the expansion of any such use exceeding 1/3 of the land area previously dedicated to said use;
6. Junkyards, automobile recycling business, and automobile graveyards as defined in 30-A M.R.S.A. § 3752, and other recycling or scrap activities;
  7. Medical Marijuana Dispensary and Cultivation;
  8. Blasting activities.

***F. Exemptions.*** This Ordinance shall not apply to:

1. Uses which were the current or last active non-residential use of the property prior to the adoption of this ordinance, except for expansions and conversions as indicated above;
2. Agriculture, except as to the construction or expansion of commercial structures or paved areas or impervious surfaces;
3. Forest management activities and timber harvesting and related activities;
4. Residential subdivisions;
5. Facilities primarily used for boat storage, not including marinas or other marine services businesses;
6. Structures under 33 feet high supporting antennas or wind turbines;
7. Power lines 30 KV and under;
8. Outdoor areas and buildings for the primary purpose of storing or caring for fishing gear of the resident or family members, including boats. Note, however, that such activities may be governed or prohibited by sub-division covenants or deed restrictions.

## **4. ADMINISTRATION AND APPEALS**

### ***A. Administration***

The Cushing Planning Board with the assistance of the Code Enforcement Officer shall administer this Ordinance.

### ***B. General Application Requirements***

Applications shall be submitted to the Code Enforcement Officer fourteen (14) calendar days before a regularly scheduled Planning Board meeting on a

properly completed, signed and dated town form with the scheduled fee and escrow deposit and eight (8) copies of the following documents:

**1. All classifications**

- a. Evidence of the applicant's right, title and interest in the subject property;
- b. A site evaluation approved by the Plumbing Inspector and completed application for subsurface wastewater disposal system, when the nature of the use requires a subsurface wastewater disposal system;
- d. Sketch map showing the general location of the site within the Town of Cushing based upon a reduced scale copy the tax map;
- e. Sketch map of the lot showing the location of all existing or proposed structures, driveways, parking areas and other impervious surfaces (not required for High-Impact Businesses requiring formal site plan);
- f. Copies of required State and Federal permits including but not limited to those required under the Site Location Development Act, the Natural Resource Protection Act, the Stormwater Management Law, or from the Manufactured Housing Board, or the Department of Health and Human Services;
- g. Evidence of the applicant's financial and technical capacity to complete all improvements and to conduct the use at issue. To determine financial capacity, the Planning Board may require the applicant to provide such documentation as a statement of assets and liabilities, one or more bank statements, a credit history report, and as a final condition of approval, a funding commitment letter from a bank. To determine technical capacity, the Planning Board may require the applicant to provide references that support qualification to undertake the proposed development;
- h. Requests for any waivers of submission requirements, with supporting reasons.

**2.High-Impact Businesses**

- a. A list of property owners abutting or within 500 feet of the boundary of the subject property, to be obtained with the assistance of the Town Clerk;
- b. A site plan prepared by a Professional Engineer at 1"=30' to 1"=60', with topo at 2' interval or such other interval as determined by the Board, showing: roads; driveways; easements and utility corridors; delineation of wetlands, resource protection areas, and flood plains; any setbacks required by this or other ordinances; existing and

proposed buildings, parking areas, subsurface wastewater disposal facilities, water supply, storm water management, lighting, proposed landscaping and buffering, erosion and sediment control and site-based fire protection system improvements; and including the name and registration number of the person who prepared the plan and space for Planning Board endorsements and conditions;

- c. A report prepared by a licensed professional with training and experience in land stability supporting proposed development on or regrading of Soils of Concern (See Appendix I) or on a Coastal Bluff or Coastal Landslides Hazards map produced by the Maine Geological Survey;
- d. Maine Historic Preservation Commission (MHPC) report on archaeological/historical features located on the site, if applicable.
- e. Maine Department of Fisheries and Wildlife (MDIFW) report on significant wildlife habitat located on the site, if applicable;
- f. Maine Department of Environmental Protection (MDEP) report on protected natural areas, if applicable;
- g. Storm water management plan, improvements and details;
- h. Erosion control plan, improvements and details;
- i. Fire protection plan, improvements and details;
- j. A statement on the plan that the lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils;
- k. Building footprints, elevations and parking plan.

### ***C. Determination of Completeness***

1. The Code Enforcement Officer shall forward the application to the Planning Board if the basic submission requirements are in order. Within thirty-five (35) days of receipt of an application from the Code Enforcement Officer, the Planning Board shall determine whether the application is complete. If the application is incomplete, the Planning Board shall notify the applicant, in writing, of the specific deficiencies. Until a complete application has been received, the Planning Board shall not begin its review of the application. All amended submittals and materials needed to resolve deficiencies shall be received no later than 14 days prior to a scheduled Planning Board meeting for review.



2. If an application seeks review of a High-impact Business, the Code Enforcement Officer shall notify the Road Commissioner, Addressing Officer, Fire Chief and Rescue Squad Director of the proposed development including the proposed square footage and proposed fire protection plans, requesting written comment on the application before the date of the public hearing.
3. In determining completeness, the Planning Board may forgo any submission requirement if it finds that the requirement is inapplicable to the proposed development, unduly burdensome, or unnecessary to determine compliance with the standards of this Ordinance.
4. Upon finding an application complete, the Planning Board:
  - a. For High-Impact Businesses, shall schedule a public hearing to be held within thirty-five (35) days of the completeness determination, unless the applicant has agreed to an extension of time or reasonable extension is required for independent professional review. The Planning Board may schedule a public hearing for Low-Impact Businesses if the requested development may have significant impacts on neighboring properties;
  - b. Shall give notice of the hearing date, time and place to be published twice in a local newspaper and posted at the Town Office. The date of the first publication must be at least twelve (12) days prior to the hearing and the date of the second publication must be at least seven (7) days prior to the hearing;
  - c. Shall require that the applicant provide a copy of the hearing notice to all property owners abutting or within 500 feet of the subject property, and to the reviewing authority of a neighboring municipality if the proposed development abuts or crosses a municipal boundary, by registered return-receipt-requested mail, with copies of the mailing receipts provided to the Planning Board no later than 14 days before the date of the public hearing;
  - d. May schedule a site visit, which shall be a formal meeting, open to the public, with notice and minutes;
  - e. For High-impact Businesses, may determine that it requires independent technical review, consultation or other assistance in order to effectively apply the standards set forth in this Ordinance. If the Board determines such assistance to be necessary, it shall within 14 days of such determination issue a notice informing the applicant of the name of the consultant selected by the Board, an estimate of charges, and the amount the applicant must submit to pay for such charges. The applicant shall submit payment for such review before the application may be deemed complete. However, if the remainder of the application is complete, the Planning Board may elect to proceed

with review of standards other than those for which it is awaiting technical review.

Funds deposited for independent review shall be held in escrow and used to defray the cost of independent consulting services required by the Board for review of technical or legal aspects of an application. The original deposit shall be restored whenever the balance of the account goes below 25% of the original deposit. Whenever the balance in an escrow account is drawn down by 75%, the Board shall notify the applicant of the amount of funds to be deposited to restore the scheduled deposit. The Board shall furnish the applicant a record of the nature and amount of any expenditure made from the account. Unused funds shall be returned to the applicant within thirty (30) days after the later of final Board action on the application, or satisfaction of escrow obligations.

#### ***D. Decision***

1. Unless an extension of time has been agreed between the applicant and the Planning Board, the Board shall, within thirty-five (35) days after the close of the public hearing, either approve, approve with conditions, or deny the application.
2. Approval shall be based on compliance of the application with the standards of this ordinance, and with any conditions imposed by the Board to assure such compliance. The Board shall specify its reasons for approval or denial of the application, for approval or denial of any request for a waiver of any standard, and for any condition imposed.
3. In issuing its decision the Planning Board shall state in writing its findings of fact and conclusions of law and any conditions of approval, including any kind of performance guarantee that the Planning Board will require.
4. For High-impact Businesses, the Planning Board shall sign the final plat. One signed paper copy and one reproducible copy shall be filed at the Town Office, and the original shall be filed at the Knox County Registry of Deeds, with proof of recording sent to the Town. Any plat not recorded in the Knox County Registry of Deeds by the applicant within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be considered null and void.
5. The Planning Board may vote to reconsider any decision within forty-five (45) days of its decision vote. Seven (7) days' notice of the reconsideration vote shall be provided to the applicant, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). A motion to reconsider may only be made by a member who voted in the majority on the original decision. Reconsideration of a decision shall require a positive vote of the majority

of the Board members who voted on the original decision. The Board may or may not receive additional evidence and testimony.

6. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
7. The Board may as a condition of its approval allow a phased construction schedule with a defined end date. Any permit granted under these circumstances shall expire one year following the proposed end date.

### ***E. Appeals***

Any aggrieved party may take an appeal to Superior Court in accordance with the requirements of 30-A MRSA § 2691.

## **5. STANDARDS OF APPROVAL**

### **A. General Requirements:**

In reviewing site plan permit applications, the Planning Board shall consider the following approval requirements:

1. In all instances the burden of proof shall be upon the applicant to demonstrate that the proposed development is eligible for approval, complies with all requirements of Town ordinances and regulations, and that the applicant has obtained any required State and Federal approvals.
2. The Planning Board may condition approval of an application upon the adoption or attachment of covenants, conditions, and restrictions necessary to ensure that these approval standards are met.
3. All required improvements, such as roads, storm water management and treatment systems, utilities, fire protection facilities, water supply and sanitary sewage system, together with the cost of such review and certification of completion as the Board may require, shall be provided at the expense of the applicant.
4. Land not suitable for development. The Planning Board shall not approve for development such portions of a lot that:
  - a. Are located within the one hundred (100) year flood zone;
  - b. Do not comply with the uses permitted in a Resource Protection District (See Shoreland Zoning Ordinance);

- c. Are located within a right-of-way; or in an easement for transmission of electricity or electrical signals; or in an easement or common area containing fire ponds or storm water management improvements such as ponds and defined drainage ways;
  - d. Are within delineated wetlands, except as permitted by the Maine Natural Resources Protection Act (NRPA);
  - e. Are created by filling or draining a pond or wetland, except by NRPA permit;
  - f. Are in an area in which development is prohibited by order of the Maine Department of Inland Fisheries and Wildlife for protection of significant wildlife habitat, by order of the Maine Department of Conservation for the protection of a rare or unique natural feature, or by order of the Maine Historic Preservation Commission for protection of a historic feature, unless appropriate measures will be implemented to ensure protection of such feature;
  - g. timber harvesting is found in violation of the rules set out in Title 12 M.R.S.A. § 8869(14) within the previous five years, unless the citation, or an appeal thereof remains pending;
  - h. proposed development on Soils of Concern (see Appendix I) unless a licensed professional with training and experience in land stability has certified that the soils are suitable for the proposed development.
5. Where the Maine Department of Inland Fisheries and Wildlife has designated an area on or adjoining the proposed development as significant wildlife habitat, the plan shall incorporate measures required by the Department to protect an essential habitat.
  6. Where the Department of Conservation has designated a natural area on or adjoining the site rare and irreplaceable, the plan shall incorporate measures required by the Department to protect certain designations.
  7. Where the Maine Historic Preservation Commission has designated an historic or prehistoric resource on or adjoining the proposed development for protection, the plan shall incorporate measures required by the Department.
  8. Site disturbance by clearing, grading, disturbance or removal of topsoil, and cutting of trees or brush shall minimize runoff and provide for the prevention of future erosion. Applicant's plan shall comply with the latest edition of Maine Erosion and Sediment Control Best Management Practices (BMPs). Areas within the Shoreland Zone shall be subject to applicable requirements of the Shoreland Zoning Ordinance. Site disturbance shall not begin until written approval has been received from the Planning Board and, for High-impact Businesses, a site plan has been

approved and recorded in the Knox County Registry of Deeds, with proof of recording sent to the Town. Top soil may be removed from the property only in areas approved for construction.

9. Water Responsibilities. The applicant must demonstrate that there is sufficient water for the reasonably foreseeable needs of the development, including fire safety, and that the development will not alone or in conjunction with existing activities adversely affect the quality or quantity of groundwater, or adversely affect other's ability to tap into the same water resource. See the Emery & Garrett Hydrogeological Report of May 2006 for likely areas of salt-water intrusion. The Planning Board may also require a Professional report on potential water use.
10. Pollution. No activity shall deposit on or into the ground or discharge to any body of water, any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream, or wetland.
11. Waste Disposal.
  - a. All wastes (including but not limited to construction debris) shall be disposed of in a timely and environmentally safe manner and in conformance with applicable Landfill, State and Federal regulations. Types of anticipated chemical and industrial wastes shall be stipulated to the Planning Board.
  - b. An approved subsurface sewage disposal capability is required. A plan/evaluation by a licensed Soil Evaluator will be deemed sufficient.
12. Airborne Pollutants. Discharge of airborne pollutants shall conform to State and Federal limitations.
13. Noise. The development must control noise to be of such levels as to not create an unreasonable nuisance for neighboring properties.
14. Storm Water Management. Management of storm water shall meet the applicable standards and practices set forth in the latest edition of Chapter 500 "Storm Water Management Rules" and "Storm water Management for Maine" as amended, Maine Department of Environmental Protection publications, and the standards of professional engineering practice. Storm water run-off shall be treated by the use of best management practices (BMPs) equivalent to those set forth in "Storm Water Management for Maine". The natural state of watercourses, swales, and floodways shall be preserved to the extent practicable.

15. Access

- a. No development shall cause the level of service of any public road to fall below category C (see Appendix II), or to lower the level of service if it is already below category C.
- b. Access to the site shall comply with the Town of Cushing Road Access Ordinance and provide safe access for fire, emergency, maintenance, delivery, employee and visitor vehicles. The applicant shall provide evidence that an MDOT entrance permit or town entrance approval has been obtained.
- c. For High-impact Businesses, access drives shall be set back at least 50 feet from an abutting non-commercial property line, and shall be not less than 18 feet wide. The Planning Board may allow for the setback to be reduced to no less than 20 feet, and/or the access width to be reduced to no less than 14 feet if necessary due to the size and/or configuration of the lot.

16. Utility Easements. Utility easements shall provide access from public roads for installation and maintenance of electric, telephone, and cable services, storm water management, fire protection facilities, or erosion and sediment control facilities.

17. Buildings & Parking. The following standards apply to all new development and expansions:

- a. Setbacks from property lines of abutting non-commercial uses shall be as follows:
  - i. Exterior building wall height less than 20 feet above grade 25 feet
  - ii. Exterior building wall height more than 20 feet above grade 50 feet
  - iii. For High-Impact Businesses only:
    - 1. Parking area 25 feet
    - 2. Storage area, Mechanical Equipment or Campsite 50 feet
- b. Where the above setbacks cannot be accommodated on a property owing to its lot width, or other site-specific conditions, the Planning Board may find this provision to be met if the site plan or any approved conditions allow for sufficient buffering or other mitigation measures to minimize impact on abutting properties.

18. Buffers. Screening by trees, landscape or other vegetated or non-vegetated buffer shall be used to minimize any adverse impact of parking or mechanical areas from abutting properties and/or from any abutting road. Where the Planning Board makes a finding that existing trees in setback areas abutting non-commercial properties will not provide an adequate buffer, the Board's approval may be conditional on additional plantings or setback dimensions.
19. Parking for Staff, Activities, and Visitors. All necessary parking shall be provided on site. Parking shall be sufficient to accommodate peak business activity, including deliveries.
20. Signs. Sign structures shall be set back not less than 15 feet from a right-of way and not less than 15 feet from other property lines. Sign faces shall not exceed 32 square feet. Signs may be illuminated only by non-flashing sources. In-Home Occupations may not have any illuminated signs.
21. Exterior lighting. Exterior lighting fixtures shall direct light to grade within the property, not beyond it.
22. For High-impact Businesses, development shall comply with applicable NFPA requirements to the satisfaction of the Fire Chief.
23. Performance guarantee.
  - a. For construction of improvements for stormwater management, erosion and sediment control, and any public roadway improvements, a performance guarantee is required in the form of an irrevocable letter of credit from a financial institution or such other surety acceptable to the Planning Board.
  - b. The amount of the guarantee shall be one hundred and twenty five percent (125%) of the cost of furnishing, installing, connecting and completing in good working condition any improvements that are specified in the plan. The performance guarantee may upon request be reduced in proportion to the construction completed.

## **6. PERFORMANCE STANDARDS FOR SPECIFIC USES**

### ***A. Junkyards, Automobile Recycling Businesses, and Automobile Graveyards***

All junkyards, automobile recycling businesses and automobile graveyards shall be defined as provided in and subject to all requirements set forth in 30-A M.R.S.A. Ch. 183, Subchapter 1, including all other applicable requirements of this Ordinance

## ***B. Mineral Extraction and Blasting***

Mineral extraction and Blasting sites shall comply with all state and federal laws and regulations, as well as the following:

1. Approval of a mineral extraction and blasting site permit is conditional upon receipt of a plan to provide 7-day written notice to residents within 2000 feet of the blast site signed by the owner and operator of the property and requiring registered return-receipt-requested service, with copies of the mailing receipts provided to the Code Enforcement Officer. Failure to comply will nullify the permit.
2. Where construction, landscaping, road development or any other activity requires a blasting component, a permit application shall be submitted to the Code Enforcement Officer together with a plan to provide 7-day written notice to residents within 2000 feet of the blast site signed by the owner and operator of the property and requiring registered return-receipt-requested service, with copies of the mailing receipts provided to the Code Enforcement Officer. Failure to comply will nullify the application.
3. Copies of any required state and/or federal permits shall be submitted with the application. Failure to comply will nullify the permit and constitute a violation of this Ordinance
4. All blasting and rock crushing operations must occur only between the hours of 7 a.m. and 5 p.m.

## ***C. Medical Marijuana Dispensaries and Cultivation Facilities***

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Section 6.C, when enacted, shall govern any proposed medical marijuana dispensary or cultivation facility for which an application has not been submitted and acted on by the Planning Board prior to September 1, 2011. The following standards apply to all medical marijuana dispensaries and cultivation facilities:

1. Location Criteria. No medical marijuana dispensary or cultivation facility shall be sited within 500 feet of the lot lines of any of the following:
  - a. a church, synagogue or other house of religious worship;
  - b. a public or private school;
  - c. an athletic field, park, playground or recreational facility;
  - d. any juvenile or adult halfway house, correctional facility, methadone clinic, or substance abuse rehabilitation or treatment center;
  - e. a licensed child care facility; or
  - f. a lot on which another medical marijuana dispensary or cultivation facility is sited.



The distance cited in this subsection shall be measured between the lot line of the proposed site for the medical marijuana dispensary or cultivation facility and the lot line of the site of the use listed in (a) through (f) above at their closest points.

2. Hours of Operation. Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time. Cultivation facilities shall not be open to the general public.
3. Parking facilities in accordance with all business requirements shall be provided and meet all applicable minimums specified in this ordinance.
4. Signage and Advertising. No signage or advertising shall use the word “marijuana” or “cannabis,” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana qualifying patients and primary caregivers.
5. Security Requirements. Security measures at a medical marijuana dispensary or cultivation facility shall include, at a minimum, the following:
  - a. high definition security surveillance cameras covering all aspects of the facility installed and operating 24 hours a day, 7 days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
  - b. door and window intrusion, robbery and audible burglary alarm systems and Sheriff’s Department or State Police notification components that are professionally monitored and maintained in good working condition;
  - c. a locking safe permanently affixed to the premises or locked secure room that is suitable for storage of all prepared marijuana and cash stored overnight on the licensed premises;
  - d. exterior lighting that illuminates the exterior walls of the licensed premises and complies with Section 5.A.21 of this Ordinance;  
and

- e. deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).

All security recordings shall be preserved for at least six months by the facility. The facility shall provide the County Sheriff or Commander of the local State Police barracks or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the medical marijuana dispensary.

- 6. Fire Safety. All buildings associated with a facility, shall be protected by use of fire suppression sprinkler systems or such other effective fire suppression system as may be approved by the Fire Chief. A medical marijuana dispensary shall have a Knox Box or shall provide the Fire Department with the necessary information to allow entry by Fire Department personnel in the event of an emergency at the location.
- 7. Cultivation. All cultivation shall be conducted indoors and not be greater than twenty five percent (25%) of the total floor area of the portion of any building used for dispensing of marijuana.
- 8. On-site Consumption of Medical Marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited.
- 9. Visibility of Activities; Control of Emissions; Disposal Plan.
  - a. All activities of medical marijuana dispensaries and cultivation facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors in an enclosed, locked facility.
  - b. No marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the premises.
  - c. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

- d. All medical marijuana dispensaries shall have in place a written operational plan for proper disposal of marijuana and related byproducts in accordance with all applicable federal, state and local laws and regulations.
10. Sale of Edible Products. No food products shall be sold, prepared, produced or assembled by a medical marijuana dispensary except in compliance with all operating and other requirements of state and local law and regulation, including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.
  11. Other Laws Remain Applicable. A medical marijuana dispensary shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.
  12. Maximum Number. The maximum number of medical marijuana dispensaries in the Town shall be capped at one (1).

## **7. ENFORCEMENT**

- A. Any violation of this Ordinance, or of any condition of approval imposed under the authority of this Ordinance, shall be deemed a nuisance.
- B. The Code Enforcement Officer shall conduct periodic or phase-based on-site inspections, during construction and upon completion of the project, to insure compliance with all applicable laws, regulations, ordinances and conditions of approval. The Code Enforcement Officer shall also investigate all credible complaints of alleged violations of this ordinance. If the Code Enforcement Officer shall find that any provision of this ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices, including photographs of the violation, shall be submitted to the municipal officers and be maintained as a permanent record. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office.
- C. If the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, may institute any and all actions and

proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of addressing violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

- D. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts an activity in violation of any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

## **8. CONFLICT OF REGULATIONS**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance, or is inconsistent with a provision of any other ordinance, regulation or statute administered by the Town or State, the more restrictive provision shall control.

## **9. SEVERABILITY**

The invalidity of any section, subsection, clause, phrase or word of this ordinance shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of this ordinance.

## **10. AMENDMENT**

This ordinance may be amended by the voters of Town of Cushing following a public hearing.

## DEFINITIONS

*If a term is not defined herein, reference shall be made to the Town of Cushing Shoreland Zoning Ordinance.*

**Accessory structure or use:** A use or structure which is incidental and subordinate to the principal use or structure (e.g. garages, woodsheds). Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. Accessory structures, except those that require direct access to the water, must also meet all setback requirements.

**Agriculture:** The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; trees, shrubs and Christmas trees; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities except the cultivation and harvesting of Christmas trees.

**Blasting:** The use of explosives to break up or otherwise aid in the extraction or removal of rock, or other consolidated natural formations.

**Campground:** A commercial use on any area or tract of land accommodating two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

**Commercial use:** The use of lands, buildings, or structures the intent of which activity is the production of income from buying, selling or rental of goods, activities, and/or services.

**Day:** A calendar day.

**Development:** A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Driveway:** A vehicular access way less than 500 feet in length serving two lots or less.

**Essential services:** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic

signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure:** An increase in the floor area or volume of a commercial structure.

**Floor Area:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure.

**Forest management activities:** Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forested wetlands:** A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

**Freshwater wetland:** Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are:

1. Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Grade:** The slope of a surface, such as a lot or road, with a vertical rise or fall expressed as a percentage of the horizontal distance; e.g. a 3 percent upgrade means a rise of 3 feet per 100 feet of horizontal distance.

**Height of a structure:** The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

**Industrial:** The assembling, fabricating, finishing, manufacturing, packaging, processing or warehousing of goods; also, the extraction of minerals.

**Institutional:** a non-profit or quasi-public use, or institution such as a church, library, public or private school, utility substation, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Lot area:** The area of land enclosed within the boundary lines of a lot.

**Medical marijuana cultivation facility:** The indoor area used for cultivation of medical marijuana in accordance with 22 M.R.S.A. Chapter 558-C, unless all cultivation is for the exclusive use of one or more persons residing on the property.

**Medical marijuana dispensary:** A “registered dispensary” as that term is defined in 22 M.R.S.A. § 2422(6), as may be amended. A medical marijuana dispensary includes a location at which marijuana is cultivated by a registered dispensary pursuant to 22 M.R.S.A. Chapter 558-C. A medical marijuana dispensary is only authorized as a principal use, and not as an accessory use.

**Principal structure:** A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

**Principal use:** A use other than one which is wholly incidental or accessory to another use on the same premises.

**Professional engineer:** An engineer licensed pursuant to the provisions of Title 32 M.R.S. Ch. 19.

**Recreational facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle:** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home.

**Residence:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family or household unit at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented.

**River, stream or brook:** A channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

1. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
2. It contains or is known to contain flowing water continuously for a period of at least three months of the year in most years.
3. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water
4. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
5. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for, or created by, the repeated passage of motorized vehicles.

**Service drop:** Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. In the case of telephone, cable or similar transmission service
  - a. the extension, regardless of length, will be made by the installation of wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback:** The least horizontal distance from a regulated object to a property line, road right-of-way, the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

**Slope:** The inclined surface of a hill, mountain, plateau, plain, or any part of the surface of the earth.

**Structure:** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and poles,



wiring and other aerial equipment normally associated with service drops, as well as guying and guy anchors.

**Substantial start:** completion of thirty percent (30%) of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface sewage disposal system;** any system designed to dispose of waste or waste water on or beneath the surface of the earth; including, but not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. Section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system

**Timber harvesting:** The cutting and removal of timber for the primary purpose of selling or processing forest products.

**Timber harvesting and related activities:** Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Vegetation:** All live trees, shrubs, and other plants.

**Water body:** Any great pond, river, stream or tidal area.

## **Appendix I: SOILS OF CONCERN**

The following soils are not recommended by the Knox & Lincoln County Soils Survey for:

- a. development due to flooding: Charles, Lovewell, Medomak.
- b. development due to organic composition: Borosapristis
- c. development due to high seasonal water table and poor drainage: Biddeford, Boothbay, Brayton, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
- d. development due to erosive soils: Biddeford, Boothbay, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
- e. stable slopes: Adams and Masardis 15-25% slopes, Allagash 8-15% slopes.
- f. buildings with basements, due to unstable subsoils: Hermon, Madawaska, Masardis.

## Appendix II: EXPLANATION OF HIGHWAY LEVEL OF SERVICE

Level of Service is an assessment of the quantitative effect of factors such as speed, volume of traffic, geometric features, traffic interruptions, delays, and freedom to maneuver. Level of Service provides a measurement of the delay experienced at an intersection as a result of traffic operations at that intersection. In general, there are six levels of service: Level of Service A to Level of Service F. The highest, Level of Service A, describes a condition of free-flow operations where the effects of incidents are easily absorbed. Level of Service B, describes a state in which maneuverability and speed limits are beginning to be restricted by other motorists although level of comfort is still high. In Level of Service C, experienced drivers are still comfortable but maneuverability is noticeably restricted. Level of Service D brings noticeable congestion and driver comfort levels decrease. In Level of Service E, roadway capacity is reached and disruptions are much more prevalent – driver comfort has declined. Finally, Level of Service F is the result of volumes greater than roadway capacity with congestion and possible stopped conditions. Maine DOT has determined that Levels of Service A-D are acceptable conditions for intersections.

The measures of delay for each Level of Service rating for unsignalized and signalized intersections are found in the following table:

Level of Service	Signalized Intersection	Unsignalized Intersection
A	≤10	≤10
B	10–20 sec	10–15 sec
C	20–35 sec	15–25 sec
D	35–55 sec	25–35 sec
E	55–80 sec	35–50 sec
F	>80 sec	>50 sec

(Source: Excerpt from Town of Wells Route 109 Traffic Study, prepared by TyLin International: <https://www.wellstown.org/DocumentCenter/View/2695/Route-109-Corridor-Study--Final-Report>)

## **CERTIFICATE OF ADOPTION**

I hereby attest that this is a true copy of the Site Plan Review Ordinance of the Town of Cushing, Maine, duly adopted by the legislative body of the Town of Cushing, Maine, on March \_\_\_\_ 2019.

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Town Clerk

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Date