

TOWN OF LIVERMORE
SITE PLAN REVIEW ORDINANCE

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SECTION 1 PURPOSE

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 by assuring that non-residential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access, sedimentation, protection of ground water, protection of the environment, wildlife habitat, fisheries and unique natural area; protection of the historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

SECTION 2 APPLICABILITY OF SITE PLAN REVIEW

A person who has right title and interest in a parcel of land must obtain a site plan approval from the Code Enforcement Officer or Planning Board prior to commencing any of the following activities, or undertaking any alteration or improvement of the site including grubbing or grading.

- (1) The construction or replacement of any new building or structure for a nonresidential use, including accessory buildings and structures.
- (2) The expansion of an existing nonresidential building or use that increases the total floor area by more than twenty-five (25) percent within a five (5) year period.
- (3) The conversion of an existing building, in whole or in part, from a residential use to a nonresidential use.
- (4) The establishment of a new nonresidential use even if no building or structures are proposed including uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
- (5) The conversion of an existing nonresidential use, in whole or in part to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on or off site impacts of the use subject to the standards and criteria of site plan review described in section 9 of this ordinance.
- (6) The construction of a residential building containing three (3) or more dwelling units.
- (7) The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure to three (3) or more; or the modification or expansion of an existing residential structure consisting of three (3) or more dwelling units.
- (8) The conversion of existing nonresidential buildings or structures, in whole or in part, into three (3) or more dwelling units.

(9) The construction or expansion of paved areas or other impervious surfaces, at commercial sites and residential structures of three (3) or more units, including walkways, access drives, and parking lots involving an area of more than two thousand five hundred (2,500) square feet within any three (3) year period.

The following activities shall not require site plan approval. Certain of these activities will, however require the owner to obtain a building permit, plumbing permit or other state or local approvals.

(1) The construction alteration, or enlargement of a single family or two family dwelling, including accessory buildings and structures.

(2) The placement, alteration or enlargement of a single manufactured housing or mobile home dwelling including accessory buildings and structures on individually owned lots.

(3) Agricultural activities, including agricultural buildings and structures.

(4) Timber harvesting and forest management activities

(5) The establishment and modification of home occupations that do not result in changes to the site or exterior of the building.

(6) Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.

(7) Home Occupations as defined in section 3.2 of this ordinance.

(8) A new use of a structure and or land area that has previously undergone site plan review and approval by the Planning Board when the Code Enforcement Officer makes written findings that:

(1) The new use will comply with the standards in Section 9 approval standards and Criteria.

(2) The structure or land area will not be enlarged beyond what is permitted in the section 2 (2) and section 2(9).

(3) The hours of operation of the new use will be similar to those approved by the Planning Board for the previous use and,

(4) Traffic Volumes will not increase from low volume generator to a medium or high volume generator or from medium generator to a high volume generator as defined in section 3.

(9) Accessory structures to commercial, manufacturing and industrial structures and uses of greater than 1,000 square feet in total floor area shall require review and approval of compatibility by the Code Enforcement Officer. Before making a determination of compatibility, the Code Enforcement Officer shall make a positive written finding that the proposed accessory structure meets the criteria contained in sections 9.1, 9.5, 9.8, 9.9, 9.13, 9.14, 9.15, and 9.16.

3.1. DEFINITIONS

All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in singular shall include the future. Words used in the singular shall include the plural.

3.2 Definitions

Abutting property: Any lot which is physically contiguous with the subject lot even if only at a point and any lot which is located directly across a street of right-of-way from the subject lot such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property.

Accessory Building: A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land, and which is located on the same lot as that of the principal building or use.

Accessory structure or use: A use or structure which is incidental and subordinate to the principal use or structure. 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 common wall is considered part of the principal structure.

Aggrieved party: An owner of land whose property is directly or indirectly affected by the granting or denial of an approval under this ordinance: a person whose land abuts land for which approval has been granted: or any person or group of persons who have suffered particularized injury as a result of the granting or denial of such approval.

Arterial: A controlled access road or a street of road with traffic signals at important intersections and/ or stop signs on side streets or which is functionally classified by Maine Department of Transportation as a arterial.

Building: Any permanent structure having one or more floors and a roof which is used for the housing or enclosure of persons, animals, or property. When any portion thereof is separated by a division wall without opening, then each such portion shall be deemed a separate building.

Building footprint: The area covered by a building measured from the exterior walls at grade level exclusive of cantilevered portions of the building. Where the building is elevated above grade level on posts or similar devices, the building footprint is the area the building would cover if it were located at ground level.

Change from one category of nonresidential structure to another category of nonresidential structure use: A change in the type of occupancy of a nonresidential building or structure or portion thereof, such that a basic type of use is changed such as from retail to office or storage to a restaurant, but not including a change in the occupants.

Collector street: A street that collects traffic from local streets and connects with arterial's or a street or road functionally classified as a collector by the Maine Department of Transportation.

Curb cut: The opening along the curb line or street right-of-way line at which point vehicles may enter or leave the street.

Enlargement or expansion of a structure: An increase of the building footprint and/or height of the structure beyond its' present highest point. alterations of existing buildings which are required in order to meet the requirements of the Americans with Disabilities Act (ADA) and or the State Fire Code are not considered to be enlargements or expansions of a structure and are not required to meet otherwise applicable setback requirements, provided the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.

Enlargement of expansion of use: Any intensification of use in time, volume or function, whether or not resulting from an increase in the footprint, height, floor area, Land Area or cubic volume occupied by a particular use. Increases which are required in order to meet the requirements of the ADA and/or the state fire code are not considered to be enlargements or expansions of use.

Fisheries, Significant Fisheries: Areas identified by a governmental agency such as the Maine Department of Fish and Wildlife, Atlantic Salmon Authority or Maine Department of Marine Resources as having significant value as fisheries and areas so identified in the municipalities comprehensive plan.

Floor Area: The sum of the horizontal areas of the floor(s) of a structure by exterior walls.

Groundwater: All of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

High Volume Driveway: Driveways with more than 200 peak vehicle trips based on the latest edition of The Institute of Traffic Engineers' Trip Generation Report.

Historic or Archaeological Resources: Areas indemnified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and areas identified in the municipalities comprehensive plan.

Home Occupation: The category of residential use that meets the following criteria:

a. Not more than two persons that do not make the residence their permanent home may be employed (including part time workers).

b. The occupation within the structure(s) is conducted in such a manner that would not cause the residence to differ from the residential character of abutting properties by means of colors, lights or sounds.

c. The appearance of the structures(s) or accessory structure(s) may only be altered and finished in the same manner as the original structure(s) such that the character and appearance of the principal structure(s) is maintained.

d. There is adequate off street parking on the premises for customers and client use.

e. It does not affect any natural resources or environmentally sensitive areas.

f. The occupation does not use chemicals not commonly found in a residence and shall not use or store chemicals in quantities not commonly used in a residence.

g. Does not generate any nuisance, waste, discharge, offensive noise, vibration, smoke, dust, heat, glare, fumes or electrical interference detectable to the normal senses or which interferes with normal radio or television reception, or causes other nuisances which extend beyond the subject property. All waste materials from the home occupation shall be removed promptly from the premises, according to state law and local ordinance.

h. Does not display more than five (5) items for sale, and has no exterior exhibits or storage of materials or any exterior indication of the home occupation other than one sign not exceeding twenty four (24) square feet as measured from the outermost corners in straight lines.

Impervious Surface: The are covered by buildings and associated constructed facilities, areas which have been or will be covered by a permeable material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas, which have been or will be compacted through design or use to reduce their permeability. Common impervious surfaces include but are not limited to, roof tops walkways, patios, driveways, parking lots or storage areas concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water.

Local Street: A public street or road which is not identified as an arterial or collector. A local street includes a proposed street shown on an approved and recorded subdivision.

Lot Area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Low volume Driveway: Driveways with less than 50 vehicles trips/day based on the latest edition of The Institute of Traffic Engineers' Trip Generation Report

Natural Areas and Natural communities, Unique Natural Areas and Natural Communities: Areas identified by a governmental agency such as the Maine Department of Conservation, Natural Areas Program as having significant value as a natural area and any areas identified in the municipalities comprehensive plan.

Median Volume Driveway: Driveways with more than 50 vehicle trips/ day but fewer than 200 peak hour vehicle trips based on the latest edition of The Institute of Traffic Engineers' Trip Generation Report

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.

Recharge Area: Area composed of permeable, porous material through which precipitation and surface water infiltrate and directly replenish groundwater in aquifers.

Setback, Front: An open area extending the entire width of a lot from lot sideline to lot sideline and extending in depth at right angle from the street right-of-way to such depth as specified. Such area shall be unoccupied and unobstructed by any building from the ground.

Setback, Side: An open area extending along each sideline of a lot between the front setback and the rear setback on such lot and extending at a right angle from the sidelines of such lot to such depth as specified. Such area shall be unoccupied and unobstructed by any building from such depth as specified. Such area shall be unoccupied and unobstructed by any building from the ground upward.

Structure: Anything constructed or erected, which requires location on the ground or attached to something having location on the ground, but not including a tent or vehicle.

Substantially Commenced; Substantially Completed: Construction shall be considered to be substantially commenced when any work beyond the state of excavation, including but not limited to, the pouring of a slab or footings, the installation of piles, the construction of columns, or the placement of a manufactured home on a foundation has begun. Construction shall be considered to be substantially completed when it has been completed to the point where normal functioning, use, or occupancy can occur without concern for the general health, safety, and welfare of the occupant and the general public. At a minimum it shall include the completion of no less than seventy (70) percent of the costs of the proposed improvements within a development and shall include permanent stabilization and /or re-vegetation of areas of the site that were disturbed during construction.

Use: The purpose for which land or building is arranged, or intended or for which either land or building is or may be occupied or maintained.

Vegetation: All live trees, shrubs, ground cover and other plants.

Wildlife Habitat, Significant Wildlife Habitat: Areas identified by a governmental agency such as Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals and any areas identified in the municipality's comprehensive plan.

Section 4 Administration and Enforcement

This ordinance shall be administered by the Code Enforcement Officer and Planning Board and enforced by the Code Enforcement Officer (CEO) appointed by the Municipal Officers.

It shall be the duty of the CEO or his/her agent to enforce the provisions of this ordinance. If the CEO or his/her agent shall find that any provision is being violated, he/ she shall notify in writing the person responsible for such violation, including the nature of the violation and ordering the action necessary to correct it. He/ she shall order discontinuance of illegal use of buildings, structures, addition, or work being done, or shall take any other action authorized by this ordinance to insure compliance with or to prevent violation of its' provisions.

The CEO is hereby authorized to institute or cause to institute, in the name of the municipality any and all actions, legal or equitable, that may be appropriate or necessary for the municipality, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this ordinance; provided however that that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this ordinance.

Any person, firm or corporation being the owner of or having control or use of any building or premises who violated any of the provisions of this ordinance, shall be fined in accordance with Title 30-A ss4452. Each day a violation is permitted to exist after notification shall constitute a separate offense. The municipal Officers or their authorized agent are hereby authorized to enter into an administrative consent agreements for the purpose of eliminating 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 the public health and safety or will result in substantial environmental damage.

Section 5 Interpretation of the Ordinance:

The Panning Board shall be responsible for administering the provisions of this ordinance including interpretation the provisions hereof.

Section 6: Review and Approval Authority

The Planning Board is authorized to review and act on all plans for development requiring site plan review as defined above.

In considering site plans under this provision the Planning Board may act to approve, disapprove or approve with conditions as are authorized by these provisions.

6.1 Code Enforcement Officer Site Plan Approval

(1) The Code Enforcement Officer (CEO) shall review and approve, approve with conditions or deny all applications for site plan approval as set forth in section 2 (1) through (9) that encompass up to a combined total of 5,000 square feet of gross floor, land and parking areas. If in any two (2) year period site plan approval is needed as set forth in section 2 (1) through 9. If the combined gross floor, land and parking areas exceed 5,000 square feet then such application shall be reviewed by the Planning Board. The CEO may refer any application submitted under this section to the Planning Board if the CEO finds that the application is more complex than he/her expertise qualifies him/her to review or if the CEO finds that the public has a significant interest in the development and should be afforded the opportunity for formal input.

(2) The CEO shall utilize the following procedures for CEO review of site plan review applications.

(a) An applicant for a CEO site plan review approval shall submit two (2) copies of a development plan, a fully executed and signed copy of the application for site plan review and the application

information contained in section 8 to the Code Enforcement Officer. Upon receiving a development plan and application for CEO review the Code Enforcement Officer shall use issue the applicant a receipt.

(b) Within seven (7) days of receiving a development plan and application the applicant shall notify the property owners within five hundred (500) feet of the edge of the applicant's property lines by certified mail, return receipt requested, of the pending application for site plan review. Notification forms and the names and address shall be obtained from the town office. This notice shall indicate that an application has been received and how further information can be obtained.

(c) Within fourteen (14) days from the CEO's receipt of a site plan review application the Code Enforcement Officer may schedule an on-site inspection of the property that shall be jointly attended by the applicant or a duly authorized representative and the Code Enforcement Officer.

(d) Within twenty-one (21) days from the CEO's receipt of a site plan review application the CEO shall notify the applicant in writing either that the application is complete or if it is incomplete, the specific information that needs to be addressed to make a complete site plan application.

(e) Upon receipt of additional information and determination that a complete application has been submitted for review, the CEO shall issue a dated notice to the applicant.

(f) Within thirty (30) days of the receipt of a complete application or within another time limit as may be otherwise mutually agreed to by the CEO and the applicant, the CEO after considering the standards contained in section 9 shall approve, approve with conditions or deny the application and issue a written decision and findings of fact to the applicant.

Section 7 Review Procedures

The Code Enforcement Officer or Planning Board shall use the following procedures in reviewing applications for site plan review.

7.1 Pre-application

Prior to submitting a formal application, the applicant or his/her representative may request a pre-application conference with the Planning Board. A pre-application conference is strongly advised. The pre-application conference shall be informal and informational in nature. There shall be no fee for a pre-application review and such a review shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. ss302. No decision on the substance of the plan shall be made at the pre-application conference.

7.1.1 Purpose

The purpose of pre-application conferences are to:

- (1) Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal.
- (2) Allow the applicant to understand the development review process and required submissions.
- (3) Identify issues that need to be addressed in future submissions.
- (4) Make the applicant aware of any opportunities for coordinating the development with community policies or facilities.

In addition the Planning Board may schedule a site inspection in accordance with subsection 7.2(5) if deemed necessary and resolve any requests for waivers and variations from the submission requirements.

7.1.2 Information Required

There are no formal submission requirements for a pre-application conference, however the applicant should be prepared to discuss the following with the board.

- (1) The proposed site including its location, size and general characteristics.
- (2) The nature of the proposed use and potential development
- (3) Any issues or questions about existing municipal regulations and their applicability to the project.
- (4) Any requests for waivers from the submission requirements.

7.2 Application Submission and Review Procedures

The applicant must prepare and submit a site plan review application including the development plan and supporting documentation that meets the submission requirements set forth below. This material must be submitted to the chair of the Planning Board.

- (1) At the first meeting at which the applicant is considered the Planning Board shall give a dated receipt to the applicant and shall instruct the applicant to notify by Certified Mail, return receipt requested, all property owners within five hundred (500) feet of the parcel on which the proposed development is located. Written notice of the pending application shall be mailed to the Municipal Officers, Fire Chief, Highway Foreman, Code Officer, Plumbing Inspector and other parties.
- (2) Within thirty (30) days if the receipt of a formal site plan review application the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete the board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the board until the additional information is submitted to the board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
- (3) As soon as the board determines that the application is complete the board shall: notify the applicant in writing of this finding, meet the notification requirements of subsection 4 below and schedule a Public Hearing within thirty (30) days of this finding.

(4) The Planning Board shall publish notice of the date, time and place of the meeting at which the application will be considered in the newspaper of general circulation.

(5) The Planning Board may hold an on-site inspection of the site to review the existing conditions, verify the information submitted and investigate the development proposal. The board may schedule this visit either before or after the first meeting at which the application is considered. The board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application as specified in 6 below may be extended, said extension shall not exceed thirty (30) days after the board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties entitled to notice under subsection 4.

(6) The Planning Board shall take final action on said application within thirty (30) days of the public hearing. The Board shall act to deny, approve, deny or to approve with conditions. The board may impose such conditions as are deemed advisable to assure compliance with the standards of approval. In issuing its decision the Planning Board shall make written finding of fact establishing that the proposed development does or does not meet the standards of approval and other requirements of the town. The board shall notify the applicant, all officials who received notice under 4 above, and all parties who requested to be notified of the action of the board including the finding of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and decision of the board. All time limits provided for in this section may be extended by mutual agreement of the applicant and the Planning Board.

7.3 Final Approval and Filing

Upon completion of the requirements of this section and an approval vote by the majority of the Planning Board, the application shall be deemed to have final approval and the site plan shall be signed by a majority of the members of the board and must be filed by the applicant with the Code Enforcement Officer. Any plan not so filed within thirty (30) days of the date upon which such plan is approved and signed by the board shall become null and void. The signed plan must reference the book and page numbers of the applicant's deed and must be recorded by the applicant in the Androscoggin County Registry of Deeds within thirty (30) days of the vote to approve the plan. The Planning Board by vote may extend the filing period for good cause.

7.4 Fees

7.4.1 Application Fee

An application for site plan review must be accompanied by an application fee. This fee is intended to cover the cost of the municipality's administrative processing of the application including notification, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality and evidence of payment of the fee must be included with the application.

7.4.2 Technical Review Fee

In addition to the application fee, the applicant for site plan review must also pay a technical review fee to defray the municipality's legal and technical costs of the application review. This review fee must be paid to the municipality and shall be deposited in the Planning Board account which shall be separate and distinct from all other municipal accounts. The application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board.

The board may reduce the amount of the technical review fee if it determines that the scale or nature of the project will require little or no outside review.

The technical review fee may be used by the Planning Board to pay reasonable costs incurred by the board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include but need not be limited to consulting, engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The municipality shall provide the applicant, upon written request, with an accounting of his/ her account and shall refund all of the remaining monies including accrued interest in the account after payment by the town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the board for any enforcement purposes nor shall the applicant be liable for costs incurred by or costs of services contracted for by the board which exceed the amount deposited to the trust account.

7.4.3 Establishment of Fees

The municipal Officers may from time to time and after consultation with the Board, establish the appropriate application fee. The technical review fee will be set by the Planning Board on an application by application basis.

Section 8 Submission Requirements

Applications for site review must be submitted on application forms provided by the municipality. The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the chair of the Planning Board. The submission must contain at least the following exhibits and information unless specifically waived in writing. The Planning Board may waive any submission requirements based upon a written request of the applicant. Such request must be made at the time of the pre-application conference, or at the initial review of the application if no pre-application conference is held. A waiver of any submission requirement may be granted only if the board makes a written finding that the information is not required to determine compliance with the standards.

All applications for site plan review must contain the following information:

- (1) A fully executed and signed copy of the application for site plan review.
- (2) Evidence of payment of the application and technical review fees.

(3) Eight (8) copies of written materials, plus eight (8) sets of maps or drawings containing the information listed below. The written materials must be contained in a bound report. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval standards and criteria, but in no case shall be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development.

8.1 General Information

- (1) The owner of Record name, address and phone number and applicant's name, address and phone number if different.
- (2) The location of all buildings setbacks, yards, and buffers.
- (3) Names and addresses of all property owners within five hundred (500) feet of any and all property boundaries.
- (4) Sketch map showing general location of the site within the municipality based upon a reduction of the tax maps.
- (5) Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
- (6) Tax map and lot numbers of the parcel or parcels on which the project is located.
- (7) A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
- (8) The name registration number and seal of the person who prepared the plan, if applicable.
- (9) Evidence of the applicant's technical and financial capability to carry out the project as proposed.

8.2 Existing Conditions

- (1) Zoning classifications including overlay and/or sub districts of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or sub districts or abuts a different district.
- (2) The bearing and length of all property lines of the property to be developed and the source of this information. The Planning Board may waive this requirement of a boundary survey when sufficient is available to establish on the ground all property boundaries.
- (3) Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations and power and telephone lines and poles on the property to be developed, on abutting streets, or land that may serve the development and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of flow.
- (4) Location, names, and present widths of existing public and/or private streets and right-of-ways within or adjacent to the proposed development.
- (5) The location, dimensions and ground floor elevation of all existing buildings on the site.
- (6) The locations and dimensions of existing driveways, parking and loading areas, walkways and sidewalks on or immediately adjacent to the site.

- (7) Location of intersecting roads or driveways within two hundred (200) feet of the site.
- (8) The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees and other important or unique natural areas and site features including but not limited to floodplains, deer wintering yards, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, historic and/or archaeological resources, together with a description of such features.
- (9) The direction of existing surface water drainage across the site.
- (10) The location, front view, dimensions and lighting if existing signs.
- (11) Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
- (12) The location of the nearest fire hydrant or other water supply for fire protection.

8.3 Proposed Development Activity

- (1) Estimate demand for water supply and sewage disposal together with the location and dimensions of all provisions for water supply and waste water disposal and evidence of their adequacy for the proposed use including soils tests pit data if on-site sewage disposal is proposed.
- (2) The direction of proposed subsurface water drainage across the site and from the site, with assessment of impacts on downstream properties.
- (3) Provisions for handling all solid wastes including hazardous and special wastes and the location and proposed screening of any on site collection or storage facilities.
- (4) The location dimensions and materials to be used in the construction of proposed driveways, parking and loading areas and walking and any changes in traffic flow onto or off site.
- (5) Proposed landscaping and buffering
- (6) The location, dimensions and ground floor elevation of all proposed buildings or building expansion proposed on the site.
- (7) Location, front view, materials and dimensions of proposed signs together with the method for securing the sign.
- (8) Location and type of exterior lighting.
- (9) The location of all utilities including fire protection systems.
- (10) A general description of the proposed use or activity.

(11) An estimate of the peak hour and daily traffic to be generated by the project.

(12) Storm water calculations, erosion and sedimentation control measures and water quality and/or phosphorous, if project requires a storm water permit. From the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale or the existing conditions in the vicinity of the project.

8.4 Approval Block

Space must be provided on the plan drawing for the signatures of the Planning Board and date together with the following words, "Approved Town of Livermore Planning Board".

Section 9 Approval Standards and Criteria

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

9.1 Utilization of the Site

The plan for the development must reflect the natural capabilities of the site to support development. Building lots and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas also must be preserved to the maximum extent. The development must include appropriate measures for protecting these resources including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

9.2 Adequacy of Road System

Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on Major access routes to the site with one (1) mile of any entrance road which are functioning at a level of service of D or better prior to the development must function at a minimum at level D after development. If any such intersection is functioning at a level E or lower prior to the development the project must reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the town's adopted Comprehensive Plan and the board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

A development not meeting this requirement may be approved if the applicant demonstrates that:

(1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or

(2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.

9.3 Access into the Site

Vehicular access to and from the development must be safe and convenient.

(1) Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards to the maximum extent possible.

(2) Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

(3) The grade of any proposed drive or street must be not more than + or - 3% for minimum of two (2) car lengths or forty (40) feet from the intersection.

(4) The intersection of any access/ egress drive or proposed street must function:

(a) At a level of service of D following development if the project will generate one thousand (1000) or more vehicle trips per twenty four (24) hour period or

(b) At a level which will allow safe access into and out of the project if less than one thousand (1000) trips are generated

(5) Where a lot has frontage on two (2) or more streets the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.

(6) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

(7) Access ways must be designed and have sufficient capacity to avoid the waiting in line of entering vehicles on any public street.

(8) The following criteria must be used to limit the number of driveways serving a proposed project:

a. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.

b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all access ways must not exceed sixty (60) feet.

9.4 Access way Location and Spacing

(1) Private entrances / exits must be located at least fifty (50) feet from the closest un-signalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the access way. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

(2) Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane – No Parking).

(3) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

(4) All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian and cyclist safety, all season emergency access, snow storage and delivery and collection services.

9.6 Parking Layout and Design

Off-street parking must conform to the following standards:

(1) Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.

(2) All parking spaces, access drives and impervious surfaces must be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by access-ways not exceeding twenty- four (24) feet in width.

(3) Parking stalls and aisles and aisle layout must conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"	–	18'-0"	24'-0" two way
60 °	8'-6"	10'-6"	18'-0"	16'-0" One way only
45 °	8'-6"	12'-9"	17'-6"	12'-0" One way only
30 °	8'-6"	17"-0"	17"-0"	12'-0" One way only

- (4) In lots utilizing diagonal parking the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- (5) Parking areas for nonresidential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling.
- (6) Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
- (7) Parking lots for the display of motor vehicles offered for sale must be set back minimum of fifty (50) feet from any road right of way.
- (8) All parking lots for the display of motor vehicles offered for sale on sites where the aggregate number of vehicles displayed is twenty-five (25) or more must be paved.

9.7 Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/ exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right of way or outside if the right of way in open space or recreation areas. The system must be designed to link the project with the residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or when appropriate to connect with amenities such as parks or open space on or adjacent to the site.

9.8 Storm water Management

Adequate provisions must be made for the collection and disposal of all storm water that runs off proposed streets, parking areas, roofs, and other surfaces through a storm water drainage system and maintenance plan which must not have adverse impacts on abutting or downstream properties.

- (1) To the extent possible the plan must retain storm water on the site using the natural features of the site.
- (2) Unless the discharge is directly a major river segment storm water runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.
- (3) The applicant must demonstrate that on and off site downstream channel or system capacity is sufficient to carry the flow without adverse effects including but not limited to flooding and erosion of shoreland areas or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.

(4) All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.

(5) The design of the storm water drainage system must provide for the disposal of storm water without damage to streets, adjacent properties, downstream properties, soils and vegetation.

(6) The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

(7) The biological and chemical properties of the receiving waters must not be degraded by the storm water runoff from the development site. The use of oil and grease traps in manholes, the use of site vegetated waterways, vegetated buffer strips along waterways and drainage swales and the reduction in use of deicing salts and fertilizers may be required especially where the development's storm water discharges into a gravel aquifer area or other eater supply source or a great pond.

9.9 Erosion Control

All building sites and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible such that filling, excavation, and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill and/or the need for retaining walls. Natural vegetation must be present and protected where ever possible.

Soil erosion sedimentation of watercourses and water bodies will be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices dated March 1991.

9.10 Water Supply

The development must be provided with a system of water supply the applicant must secure and submit a written statement from a supplier that the proposed water system conforms with it's design and construction standards, will not result in an undue burden on the source or distribution system and will be installed in a manner adequate to provide needed domestic and fire protection flows.

9.11 Sewage Disposal

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing and Waste water disposal codes.

(1) All sanitary sewage from new or expanded uses must be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.

(2) If the public collection system is not at the lot line but can be extended in the public right of way the collection system must be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within one hundred (100) feet of a new use with a design sewage flow pf less than five (500) hundred gallons per day or within three

hundred (300) feet of a new use with a design sewage flow of five hundred (500) or more gallons per day, and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that the connection to the public system will occur if and when the subsurface system needs to be replaced.

(3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage must be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Waste Disposal Rules.

(4) When two (2) or more lots or buildings in different ownership share the use of a common subsurface Waste Disposal system, the system must be owned and maintained in common by an owners association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding for the association to assure proper maintenance of the system.

(5) Industrial or commercial waste water may be discharge to public sewers in such quantities and/or of such quality as to be comparable with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment process. Pretreatment includes but is not limited to screening, grinding, sedimentation, PH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the operator of the sewage system.

9.12 Utilities

The development must be provided with electrical, telephone, and telecommunication services adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

9.13 Natural Features

The landscape must be preserved in its natural state in so far as practical by minimizing tree removal, disturbance and compaction of soil and by retaining existing vegetation in so far as practical during construction. Extensive grading and filling must be avoided as far as possible.

9.14 Groundwater Protection

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on site systems with a capacity of two Thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply following development with the standards for safe drinking water as established by the State of Maine.

9.15 Water Quality Protection

All aspects of the project must be designed so that:

(1) No person shall locate, store, discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, taste, or unsightliness or be harmful to human, animal, plant or aquatic life.

(2) All storage facilities for fuel, chemicals, or industrial wastes and biodegradable raw materials must meet the standards of the Maine Dept. of Environmental Protection and the State Fire Marshall's Office.

(3) If the project is located within a watershed of a water-body most at risk from developments identified by the Maine Department of Environmental Protection (DEP) the project must comply with the standards of the DEP with respect to the export of total suspended solids and phosphorous.

9.16 Hazardous, Special and Radioactive Materials

The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials must be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine department of Public Safety and other appropriate federal, state, and local governments.

9.17

The development must not adversely affect the water quality or shoreline of any adjacent water body. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.

9.18 Technical and Financial Capacity

The applicant must demonstrate that he/she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

9.19 Solid Waste Disposal

The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the projects wastes.

9.20 Historic and Archaeological Resources

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protection these resources including but not limited to, modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

9.21 Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the town's floodplain management Provisions.

9.22. Exterior Lighting

The proposed development must have adequate exterior lighting for its safe use during nighttime hours, if such use is contemplated. Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky.

9.23. Buffering of Adjacent Uses

The Development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. It may consist of fencing, evergreens, berms, rocks, boulders, mounds, or a combination thereof.

9.24. Noise

The licensee shall not allow on any licensed premises the making, creation, or maintenance of excessive, or unnecessary, or unnatural, or unusually loud noises which disturbs, annoys, injures or prejudices, or endangers the comfort, repose, health, peace, or safety of individuals of ordinary sensibilities or the public in general, or the property rights of others.

9.25. Storage of Materials

Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets. All dumpsters or similar large collection receptacles shall be used for ordinary trash, recyclables or other wastes and must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or public street, a year-round visual screen shall be provided to minimize adverse impacts. Where a potential safety hazard is likely to arise, physical screening to deter unauthorized persons from entering the premises must be provided and maintained in good condition."

9.26. Business Signs

Freestanding commercial business signs should blend harmoniously with the character of the area where the business is located.

(1) General Provisions

- a. Signs should be placed at right angles to the street so as to be viewed from both directions.
- b. Simple, geometrically shaped signs set as low to the ground as practicable are encouraged.
- c. Signs shall not be located within a road Right of Way or interfere with traffic control devices.

(2) Changeable Message Signs

One, two-sided changeable message sign per lot of record is permitted provided that each message remains fixed on the display surface, may be changed at reasonable intervals by electronic process or remote control, and do not include any flashing, intermittent or moving lights in accordance with Title 23 MRSA § 1914 (11-A). For the purpose of this section, signs whose text/numeric messages change by mechanical or electronic means are not prohibited as long as the intermitted lighting is used to change messages and not solely to attract attention.

The display on each side of a Changeable Sign:

a. May be changed no more frequently than once every five (5) seconds; b. Must change as rapidly as technologically practicable provided, however, that a display may change by phasing, rolling, scrolling and blending; c. May consist of alphabetic or numeric text on a plain or colored background and may include graphic, pictorial or photographic images; d. Shall not be of brightness and/or intensity sufficient to impair the vision of a vehicle operator on adjacent roadways.

(3) **Except as provided herein** changeable message signs within the Town of Livermore shall comply with all requirements of State law, in particular, but not limited to, 23 MRSA § 1914 (11-A).

Section 10. Adult Entertainment

10.1 – Purposes and Findings

1. Purpose

It is the purpose of this section to regulate adult entertainment establishments and related activities to promote the health, safety, and general welfare of the citizens of the municipality, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment establishments within the town. These provisions have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene materials.

2. Findings

a. Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

b. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where adult entertainment establishments are located.

c. Sexual acts, including masturbation, and oral and anal sex, occur at adult entertainment establishments, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

d. Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions.

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e. Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments, for the purpose of engaging in sex within the premises of such adult entertainment establishments.

f. At least 50 communicable diseases may be spread by activities occurring in adult entertainment establishments including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.

g. As of June, 2001, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 793,025.

h. The total number of cases of genital chlamydia trachomatis infections in the United States reported in 2000 was 702,093, a 6% increase over the year 1999.

i. The total number of cases of early (less than one year) syphilis in the United States reported during the twelve-year period 1996-2000 was 212,672.

j. The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,730,911 cases reported during the period 1996-2000.

k. The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

l. According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

m. Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of adult entertainment establishments where persons view "adult" oriented films.

n. Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity.

o. Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use.

p. Alcohol consumption in adult establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety, and welfare.

q. The findings noted in paragraphs (a) through (p) raise substantial governmental concerns.

- r. Adult entertainment establishments have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- s. Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.
- t. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult entertainment establishment, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
- u. The general welfare, health, and safety of the citizens of this town will be promoted by enactment of this ordinance.
- v. When more than one adult entertainment establishment use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single adult entertainment establishment use is allowed to occupy the same location.

10.2. - Definitions

1. ADULT AMUSEMENT STORE means the same as ADULT BOOKSTORE.
2. ADULT ARCADE means any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
3. ADULT BOOKSTORE means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - a. books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas;" or
 - b. instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" occupy 20% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE so long as one of its principal business purposes is the offering for sale or rental

for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

4. ADULT CABARET means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features: a. persons who appear in a state of nudity or semi-nudity; or

b. live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

c. films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

d. persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

5. ADULT ENTERTAINMENT ESTABLISHMENT means the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses.

6. ADULT ENTERTAINMENT NIGHTCLUB OR BAR means the same as ADULT CABARET.

7. ADULT MOTEL means a hotel, motel or similar commercial establishment that:

a. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

b. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

c. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

8. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

9. ADULT NOVELTY STORE means the same as ADULT BOOKSTORE.

10. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

11. ADULT VIDEO STORE means the same as ADULT BOOKSTORE.
12. EMPLOYEE means a person who performs any service on the premises of an adult entertainment establishment on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.
13. ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
14. ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
15. ESTABLISHMENT means and includes any of the following:
- a. the opening or commencement of any adult entertainment establishment as a new business;
 - b. the conversion of an existing business, whether or not an adult entertainment establishment, to any adult entertainment establishment;
 - c. the additions of any adult entertainment establishment to any other existing adult entertainment establishment; or
 - d. the relocation of any adult entertainment establishment; or
 - e. an adult entertainment establishment or premises on which the adult entertainment establishment is located.
16. ESTABLISHMENTS FEATURING STRIPPERS OR EROTIC DANCERS means the same as ADULT CABARET.
17. LIVE THEATRICAL PERFORMANCE means a play, skit, opera, ballet, concert, comedy, or musical drama.
18. NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.
19. NUDITY or a STATE OF NUDITY means the appearance of a human anus, pubic area, male genitals, or female genitals with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
20. ON-SITE VIDEO SCREENING ESTABLISHMENT means the same as ADULT ARCADE.

21. PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

22. PREMISES means the real property upon which the adult entertainment establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the Site Plan application submission requirements pursuant to Section 8 of this ordinance.

23. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

b. activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

A principal business purpose exists if the services offered are intended to generate business income.

24. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

25. SPECIFIED ANATOMICAL AREAS means:

a. the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

b. less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

26. SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

a. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

c. masturbation, actual or simulated; or

d. excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

27. SUBSTANTIAL ENLARGEMENT of an adult entertainment establishment means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on June 13, 2012.

10.3 - Location Restrictions

1. Any premises used for or in connection with the operation of an adult entertainment establishment may not be sited within 500 feet of the closest part of the structure of a business which caters to the general public or within 1,000 feet of the closest part of the structure of any of the following:

- a. A church, synagogue or other house of religious worship;
- b. A public or private elementary or secondary school;
- c. A child care facility;
- d. A public park or public recreational facility; or
- e. Any residence on adjacent property, excepting the owner or proprietor of the licensed premises. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult entertainment establishment is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, lot containing a residence, district not listed at the beginning of this section, or licensed child care facility.

2. It shall be unlawful for any person to cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of an adult entertainment establishment within one thousand (1,000) feet of another adult entertainment establishment.

3. An adult entertainment establishment may not be operated in the same building, structure, or portion thereof, containing another adult entertainment establishment.

4. For purposes of subsection (2) of this section, the distance between any two adult entertainment establishments shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

10.4 - Non-Conforming Uses; Amortization.

1. Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a nonconforming use. The non-conforming use will be permitted to continue for a period not to exceed five years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more adult entertainment establishments are within 1,000 feet of one another and otherwise in a permissible location, the adult entertainment establishment that was first established and continually operated at a particular location is the conforming use and the later established business(es) is non-conforming.

2. An adult entertainment establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed child care facility, public park, or residential use within 1,000 feet of the adult entertainment establishment, provided the rights of the adult entertainment establishment have vested prior to the location of one of the uses or structures listed in this subsection. Vesting shall have occurred if the owner/applicant for the adult entertainment establishment:

- a. exercised due diligence in attempting to comply with the law;

- b. demonstrated good faith throughout the proceedings;
- c. expended substantial unrecoverable funds in reliance on the planning board's approval;
- d. the period during which an appeal could have been taken from the approval of the application has expired; and
- e. there is insufficient evidence to prove that individual property rights or the public health, safety or welfare would be adversely affected by the project as approved.

10.5 - Additional Regulations for Adult Motels.

1. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.
2. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have an adult entertainment establishment license, rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he/she rents or sub-rents the same sleeping room again.
3. For purposes of subsection (2) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

10.6 - Additional Regulations for Escort Agencies.

1. An escort agency shall not employ any person under the age of 18 years.
2. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

10.7 - Additional Regulations for Nude Model Studios

1. A nude model studio shall not employ any person under the age of 18 years.
2. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

10.8 - Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

1. A person who operates or causes to be operated a adult entertainment establishment, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - a. A manager's station may not exceed thirty-two (32) square feet of floor area.
 - b. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

c. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, including video viewing booths, and excluding only restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

d. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (c) of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access.

e. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.

f. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

g. No viewing room or booth may be occupied by more than one person at any time.

h. No opening of any kind shall exist between viewing rooms or booths.

i. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booths or rooms, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

j. The operator of the adult entertainment establishment shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

k. The operator of the adult entertainment establishment shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

l. The operator of the adult entertainment establishment shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

SECTION 10.9 - Exterior Portions of Adult Entertainment Establishments.

1. It shall be unlawful for an owner or operator of an adult entertainment establishment to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

2. It shall be unlawful for the owner or operator of an adult entertainment establishment to allow the exterior portion of the adult entertainment establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

3. It shall be unlawful for the owner or operator of an adult entertainment establishment to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to an adult entertainment establishment if the following conditions are met:

- a. The establishment is a part of a commercial multi-unit center; and
- b. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- c. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of an adult entertainment establishment.

SECTION 10.10 - Signage.

1. Notwithstanding any other town ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any adult entertainment establishment or any other person to erect, construct, or maintain any sign for the adult entertainment establishment other than the one (1) primary sign and one (1) secondary sign, as provided herein.

2. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- a. not contain any flashing lights;
- b. be a flat plane, rectangular in shape;
- c. not exceed forty (40) square feet in area; and
- d. not exceed ten (10) feet in height or ten (10) feet in length.

3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

4. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

5. Secondary signs shall have only one (1) display surface. Such display surface shall:

- a. be a flat plane, rectangular in shape;
- b. not exceed twenty (20) square feet in area;
- c. not exceed five (5) feet in height and four (4) feet in width; and
- d. be affixed or attached to any wall or door of the enterprise.

6. The provisions of items (3) and (4) of Section 10.10 shall also apply to secondary signs.

SECTION 10-11 - Persons Younger Than Eighteen Prohibited From Entry; Attendant Required.

1. It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult entertainment establishment at any time the adult entertainment establishment is open for business.

2. It shall be the duty of the operator of each adult entertainment establishment to ensure that an attendant is stationed at each public entrance to the adult entertainment establishment at all times during such adult entertainment establishment's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the adult entertainment establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

a. a valid operator's, commercial operator's, or chauffeur's driver's license; or

b. a valid personal identification certificate issued by the State of Maine reflecting that such person is eighteen (18) years of age or older.

SECTION 10-12 - Hours of Operation

No adult entertainment establishment, except for an adult motel, may remain open at any time between the hours of 12:00 P.M. and 6:00 A.M

SECTION 10-13 - Exemptions.

1. It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

a. by a public school, licensed by the State of Maine, a college, junior college, or university supported entirely or partly by taxation;

b. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

2. Notwithstanding any other provision in this ordinance, movies rated G, PG, PG-13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this ordinance.

Sec. 10 Post approval Activities

10.1 Limitation of Approval

Substantial construction of the improvements covered by any site plan approval must be commenced within twelve (12) months of the date upon which the approval was granted.

If construction has not been substantially commenced and substantially completed within the specified period the approval shall be null and void. The applicant may request an extension of the approval

deadline prior to the expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to Two(2) six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

10.2 Incorporation of Approved Plan

One copy if the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to address field conditions.

10.3 Recording of the Approved Plan

One copy of the approved site plan must be recorded in the Androscoggin County Registry of Deeds within thirty (30) days of approval and the book and page number provided to the Code Enforcement Officer. Failure to record the plan within thirty (30) days shall void the approval. The Planning Board may extend this period for cause.

10.4 Improvement Guarantees

10.4.1 Application

(1) Improvement Guarantee- The Planning Board may require the posting of an improvement guarantee in such amount and form as specified in subsection 10.4.2 below as is reasonably necessary to ensure the proper installation of all off-site improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant.

(2) Upon substantial completion of all required improvements the developer must notify the Planning Board of the completion or substantial completion of improvements, and must send a copy of the notice to the municipal officials. The respective municipal officials shall inspect all improvements and must file a report indicating either approval, partial approval or rejection of such improvements with a statement of reasons for any rejections.

(3) The Planning Board shall either approve partially approve or reject the improvements on the basis of the report of the municipal Officials

(4) If the improvements are approved the guarantee shall be released. Where partial approval is granted the developer shall be released from Liability only for that portion of the improvements approved.

10.4.2 Form Guarantee

Performance guarantees may be provided by a variety of means including but not limited to the following which must be approved as to form and enforceability by the Board of Select-persons.

(1) Security Bond – The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.

(2) Letter of Credit – The applicant may deposit cash or other instruments readily convertible into cash at face value with the municipality or in escrow with a bank or other reputable institution.

(3) Escrow Account – The applicant may deposit cash or other instruments readily convertible into cash at face value either with the municipality or in an escrow bank. Any such account must require town approval for withdrawal and must stipulate that the town can withdraw the money upon forty-eight (48) hour advance notice to the applicant to complete the guaranteed improvements.

10.5 Submissions of As Built Plans

Any project involving the construction of more than twenty thousand (20,000) square feet of gross floor area or fifty thousand (50,000) square feet of impervious surface must provide the Code Enforcement Officer with a set of construction plans showing the building (s) and site improvements as actually constructed on the site. These “as-built” plans must be submitted within thirty (30) days of the issuance of a certificate of occupancy for the for the project or occupancy of the building.

10.6 Minor Changes to Approved Plans

Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such changes must be endorsed in writing on the approved plan by the Code Enforcement Officer.

10.7 Amendments to Approved Plans

Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents except minor changes that do not affect approval standards is subject to review and approval.

Section 11. Appeal of Planning Board Actions

11.1 The Board of Appeals as established by the adoption of the Shoreland Zoning Ordinance, Town of Livermore, shall function in accordance with 30 MRS §2411 and §4963. The board shall consist of five members appointed by the select persons in accordance with 30 MRS §2411. The board shall process appeals in accordance with 30 §2411 and §4963 and the provisions of this section.

11.2 Powers and Duties of Board of Appeals

11.2.1 Administrative Appeals: To consider in alleged errors in procedures by the Code Enforcement Officer or Planning Board in the administrative or enforcement of this ordinance.

11.2.2 Variance Appeals: To consider in specific cases where a realization of the terms of this ordinance would be contrary to the public’s interests and intent of this ordinance and where owing to unique conditions of the property and not the result of actions of the applicant, literal

enforcement would result in undue hardship. The crucial points of variance are undue hardship and unique circumstances applying to the property. Both of these elements must be present to grant a variance.

11.2.3 Further Appeal: Any aggrieved party may appeal to superior court in accordance with the Maine Rules of Civil Procedure rule 80-B

11.3 Appeal Procedure

11.3.1 Filing: Appeals shall be filed with the Town Clerk not more than 30 days after receiving notice of a decision. A filing fee of \$25.00 shall accompany the appeal which shall be submitted on forms approved by the Board of Appeals.

11.3.2 Hearing:

(1) The board of Appeals shall, before taking action on any appeal, hold a public hearing on the appeal within 30 days of filing. The Board of Appeals shall notify the Board of Select persons, Code Enforcement Officer and Planning Board at least 20 days in advance of the date, time and place of the hearing.

(2) The Board of Appeals shall also publish two hearing notices in a newspaper of general circulation, one of which will be seven days in advance of the hearing.

(3) The Board of Appeals shall notify, by certified mail, the owners of the property abutting the property for which the appeal has been filed at least ten (10) days in advance of the hearing. The notice shall include the nature of the appeal and the date time and place of the hearing.

(4) Within twenty (20) days of the hearing the Board of Appeals shall reach a decision on the appeal and shall inform the applicant, the Planning Board, The Code Enforcement Officer and the Board of Selectpersons in writing.

Section 12 Amendments to the Ordinance

Amendments of this ordinance may be initiated by the Municipal Officers, Planning Board or as specified in Title 20-A MRSA § 2522

No proposed amendments to this ordinance shall be referred to town meeting until the municipal officers have held a public hearing, notice of which shall be posted at least fourteen (14) days prior to such hearing and advertised in a newspaper of general circulation in the municipality at least 2 times with the date of first publication being at least fourteen (14) days prior to the hearing and the second at least seven (7) days prior to the hearing.

The proposed amendments shall be adopted by a simple majority vote of the town meeting.

Section 13 Severability

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision of this ordinance.

